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**Supreme Court of the United States**

**OCTOBER TERM, 1958**

**No. 404**

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**MELROSE DISTILLERS, INC., CVA CORPORATION  
AND DANT DISTILLERY AND DISTRIBUTING  
CORPORATION, PETITIONERS,**

**U.S.**

**UNITED STATES OF AMERICA.**

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**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**PETITION FOR CERTIORARI FILED SEPTEMBER 26, 1958  
CERTIORARI GRANTED NOVEMBER 10, 1958**

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 404

MELROSE DISTILLERS, INC., CVA CORPORATION  
AND DANT DISTILLERY AND DISTRIBUTING  
CORPORATION, PETITIONERS,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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[fol. 1]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

**Appendix to Appellants' Brief No. 7608**

UNITED STATES OF AMERICA,

vs.

MELROSE DISTILLERS, INC., et al.

**INDICTMENT—Returned April 6, 1955**

The grand jury charges:

**COUNT ONE**

**I. The Defendants.**

1. The Maryland State Licensed Beverage Association, Inc., (hereinafter sometimes designated as MSLBA) is hereby indicted and made a defendant herein. Said Association is a corporation organized and existing under the laws of the State of Maryland, with its principal place of business in Baltimore, Maryland. The membership of said Association is composed of retailers of alcoholic beverages doing business as such in the State of Maryland.

2. The Maryland Package Liquor Stores Association, Inc., sometimes known as The Maryland Liquor Package Association, Inc., (hereinafter sometimes designated as MPLSA) is hereby indicted and made a defendant herein. Said Association is a corporation organized and existing under the laws of the State of Maryland, with its principal place of business in Baltimore, Maryland. The membership of said Association is composed of retailers of alcoholic beverages doing business as such in the State of Maryland.

3. The Maryland Institute of Wine and Spirit Distributors, Inc., (hereinafter sometimes designated as MIWSD) is hereby indicted and made a defendant herein. Said

Association is a corporation organized and existing under the laws of the State of Maryland, with its principal place of business in Baltimore, Maryland. The membership of said Association is composed of wholesalers of alcoholic beverages doing business as such in the State of Maryland.

4. The following named corporations are hereby indicted and made defendants herein. Each is a corporation doing [fol. 2] business as a manufacturer, organized and existing under the laws of the State and with its principal offices in the city indicated hereinbelow. These defendants will sometimes hereinafter be referred to as "defendant manufacturers."

<i>Name of Manufacturer</i>	<i>State of Incorporation</i>	<i>Principal Offices</i>
National Distillers Products Corporation	Virginia	New York, New York
Joseph E. Seagram & Sons, Inc.,	Indiana	New York, New York
Distillers Distributing Corp.	Delaware	New York, New York
Hiram Walker & Sons, Inc.,	Michigan	Detroit, Michigan
Hiram Walker Incorporated	Delaware	Detroit, Michigan
Gooderham & Worts, Ltd.	Delaware	Detroit, Michigan
James Barclay & Co., Ltd.	Delaware	Detroit, Michigan
Schenley Industries, Incorporated.	Delaware	New York, New York
Schenley Distributors, Inc.,	New York	New York, New York
Melrose Distillers, Inc.	Maryland	New York, New York
Dant Distilling and Distributing Company	Delaware	New York, New York
CVA Corporation	Maryland	New York, New York
McKesson & Robbins, Inc.	Maryland	New York, New York
The Crosse & Blackwell Co.	Maryland	Baltimore, Maryland

[fol. 3] 5. The following named corporations are hereby indicted and made defendants herein. Each is a corporation doing business as a wholesaler of alcoholic beverages organized and existing or qualified under the laws of the State of Maryland and with its principal offices in the City

of Baltimore, Maryland. Each has been associated with the association indicted below. These defendants will sometimes hereinafter be referred to as "defendant wholesalers."

Name of Wholesaler	Association Affiliation
McCarthy-Hicks, Inc.	MIWSD
Churchill, Ltd.	MIWSD
The Kronheim Co., Inc.	
R.W.L. Wine & Liquor Co., Inc.	MIWSD
The Madera Bonded Wine & Liquor Co.	MIWSD
Reliable Liquors, Inc.	MIWSD
Gillett-Wright, Inc.	MIWSD

6. The following named individuals are hereby indicted and made defendants herein. Each of the said individuals is or has been associated, in the capacity indicated below, with one or more of the defendant associations, or with one of the defendant manufacturers, or with one of the defendant wholesalers, or with defendant association and a defendant other than the defendant associations. Said individual defendants, during the period covered by this indictment and within the applicable period of the statute of limitations have been actively engaged in the management, direction, or operation of the affairs, policies, and activities of the respective defendant organizations with which they are or have been associated, as indicated below, and within said period have authorized, ordered, or done some or all of the acts constituting and in furtherance of the offense herein-after charged:

[fol. 4]

Name of Individual	Address
John A. Menton	Baltimore, Md.
Lawrence Franklin	Ijamsville, Md.
Jack Wulfert	Baltimore, Md.
I. William Schimmel	Baltimore, Md.
Robert E. Joyce	New York, N. Y.
Jeffery W. Clapp	Manhasset, N. Y.
B. C. Ohlandt	Glen Ridge, N. J.
John Turner	New York, N. Y.
Ellis D. Slater	New York, N. Y.

[fol. 5]

Walter F. Terry	New York, N. Y.
Frederick J. Lind	New York, N. Y.
John O. Brownell	New York, N. Y.
Harold S. Lee	New York, N. Y.
Ross Corbit	Detroit, Mich.

**Business  
Affiliation**

**Association  
Affiliation**

**Exec. V. Pres. MSLBA**

**Financial Sec'y 1953  
MSLBA**

**President — MPLSA**

**Exec. Sec'y MIWSD**

**V. Pres. National Distillers**

**V. Pres. National Distillers**

**V. Pres. National Distillers**

**V. Pres. Distillers Distrib-  
uting Corp.**

**V. Pres. Distillers Distrib-  
uting Corp.**

**V. Pres. Distillers Distrib-  
uting Corp.**

**V. Pres. Joseph E. Seagram  
& Sons**

**V. Pres. Distillers Distrib-  
uting Corp.**

**V. Pres. Distillers, Distrib-  
uting Corp.**

**Pres. Hiram Walker & Sons**

Raymond Revit	Long Island, N. Y.
F. A. Wilson	Grosse Pointe Park, Mich.
N. M. MacDonald	Grosse Pointe Park, Mich.
Ralph T. Heymsfeld	New York, N. Y.
Murrel J. Ades [fol. 6]	New York, N. Y.
Newton Kook	Newark, N. J.
Max Sager	Brooklyn, N. Y.
J. D. Cotler	New York, N. Y.
John T. Menzies	Baltimore, Md.
Edward S. Buckler, Jr.	Baltimore, Md.
I. Strouse	Baltimore, Md.
Milton S. Kronheim	Washington, D. C.
Bernard Cohen [fol. 7]	Washington, D. C.
Morris A. Kasoff	Baltimore, Md.
Harvey Steinbach	Baltimore, Md.
Irving Smith	Baltimore, Md.
Harry W. Wright	Baltimore, Md.

V. Pres. Hiram Walker, Inc.

V. Pres. Gooderham &  
Worts

V. Pres. James Barclay &  
Co.

Pres. Schenley Distributors

V. Pres. Melrose Distillers

Pres. Dant Distilling and  
Distributing Co.

V. Pres. CVA Corporation

V. Pres. McKesson &  
Robbins

Pres. Crosse & Blackwell

Sec'y McCarthy-Hicks

MIWSD

Pres. Churchill, Ltd.

MIWSD

Pres. The Kronheim Co.

V. Pres. The Kronheim Co.

V. Pres. R.W.L. Wine &  
Liquor

MIWSD

V. Pres. Treas. Madera  
Bonded Wine

MIWSD

Reliable Liquors, Inc.

MIWSD

V. Pres. & Treas. Gillett-  
Wright

[fol. 8] 7. During all times hereinafter mentioned some of the corporate defendants named herein have wholly owned or controlled subsidiaries through which a portion of their business is transacted, and wherever in this indictment reference is made to any act or transaction on the part of any one of the said corporate defendants, it shall be deemed to include such act or transaction when performed by any of said subsidiaries.

## II. Definitions

8. Whenever any of the following terms shall be used in this indictment it shall be deemed to mean as hereinafter defined:

(a) "Alcoholic Beverages" means alcohol, brandy, whiskey, rum, gin, cordial, wine, cider and any other spiritous, vinous, malt, or fermented liquor, liquid, or compound, by whatever name called, containing one-half of one-per centum or more of alcohol by volume, which is fit for beverage purposes, except beer as hereinafter defined;

(b) "Beer" as used in paragraph 3 (a) of this indictment means any brewed alcoholic beverage and includes beer, ale, porter, and stout; and

(c) "Manufacturer" means a person who operates a plant within the United States for distilling, rectifying, blending, fermenting, or bottling any alcoholic beverage, or imports into the United States any alcoholic beverage from outside the United States, or is a distributor of alcoholic beverages selling to a wholesaler for resale to a retailer.

## III. Nature of Trade and Commerce Involved.

9. Alcoholic beverages are marketed in the State of Maryland in a continuous flow of shipments from manufacturers located outside the State of Maryland, through wholesalers and retailers, to the consuming public. Under the laws of the State of Maryland, alcoholic beverages shipped and sold in bottles or packages by manufacturers [fol. 9] thereof are sold through the Department of Liquor Control for Montgomery County, and Liquor Control

Boards in other monopoly counties, and wholesalers licensed as such under the laws of Maryland to county dispensaries and other retailers. Thus, the Department of Liquor Control for Montgomery County, the Liquor Control Boards in other monopoly counties, wholesalers, and retailers are the conduit through which alcoholic beverages shipped from States of the United States other than the State of Maryland are sold and distributed to the consuming public within the State of Maryland.

10. Alcoholic beverages shipped and sold in bottles or packages by manufacturers are customarily sold in Montgomery County to the Department of Liquor Control for Montgomery County, in conformity with the laws of the State of Maryland. The Department of Liquor Control for Montgomery County sells alcoholic beverages through county liquor dispensaries to the consuming public. The Department of Liquor Control for Montgomery County, under the laws of the State of Maryland, has customarily purchased as a wholesaler alcoholic beverages direct from manufacturers. In the counties of Caroline, Dorchester, Harford, Kent, Somerset, Worcester, and Wicomico in the State of Maryland, alcoholic beverages are sold, under the laws of the State of Maryland, through county liquor dispensaries. Said counties, however, have customarily purchased alcoholic beverages from wholesalers licensed as such under the laws of Maryland, and said counties have not customarily operated as wholesalers. Said counties, including Montgomery County are monopoly counties. In all other counties in the State of Maryland in which alcoholic beverages are sold, such alcoholic beverages are shipped and sold in bottles or packages by manufacturers thereof to wholesalers licensed as such under the laws of Maryland who in turn sell to retailers licensed as such in the State of Maryland who sell to the consuming public. Said counties are open counties.

11. Approximately 90 per cent of all alcoholic beverages sold by retailers within the State of Maryland is produced {fol. 10} outside the State of Maryland and shipped therefrom into the State of Maryland for sale and distribution to the consuming public. The total quantity of alcoholic

beverages sold and distributed within the State of Maryland in 1954 was approximately 6,235,971 wine gallons (a wine gallon being 231 cubic inches by volume). Of this total quantity of alcoholic beverages sold in 1954 in the State of Maryland, approximately 5 per cent was sold through county dispensaries and approximately 95 per cent was sold through other retailers licensed under the laws of the State of Maryland. In 1954 approximately 319,692 wine gallons of alcoholic beverages were distributed and sold in Montgomery County for approximately \$3,912,888.

12. In 1954 there were in the State of Maryland approximately 32 wholesalers of alcoholic beverages licensed under the laws of the State of Maryland and doing business in the State of Maryland in addition to the Department of Liquor Control for Montgomery County and the Liquor Control Boards of other monopoly counties in the State of Maryland. There were in 1954 in the State of Maryland approximately 8,783 retailers of alcoholic beverages in addition to county liquor dispensaries in the monopoly counties.

#### IV. The Conspiracy.

13. Beginning in or about the month of January 1950, the exact date being to the Grand Jurors unknown, and continuously thereafter up to and including the date of the presentation of this indictment, the defendants named herein, and other persons to the Grand Jurors unknown, knowingly have entered into and engaged in an unlawful combination and conspiracy to raise, fix, maintain, and stabilize the wholesale and retail prices of alcoholic beverages shipped into the State of Maryland from manufacturers located outside the State of Maryland, which combination and conspiracy has been and is now in restraint of the hereinbefore described trade and commerce in alcoholic beverages among the several States in violation of Section 1 of the Act of Congress of July 2, 1890, entitled [fo]. 11.] "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" (U.S.C., Title 15, Section 1), as amended, commonly known as the Sherman Act.

14. The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action among the defendants and others to the Grand Jurors unknown, the substantial terms of which have been and are:

(a) That so-called "fair-trade" prices for alcoholic beverages be required to be established, and that manufacturers and wholesalers be required to enforce the observance of said prices and sell alcoholic beverages only to those retailers who observe and adhere to said prices;

(b) That retailers be required to observe and adhere to, or be induced and compelled to observe and adhere to, "fair-trade" prices on alcoholic beverages established as aforesaid;

(c) That no alcoholic beverages sold in the State of Maryland be sold directly by a manufacturer to the Department of Liquor Control for Montgomery County or the Liquor Control Boards of other monopoly counties, or be sold to said purchasers indirectly through a wholesaler at prices less than his customary resale prices; and

(d) That manufacturers, wholesalers, and retailers, shall boycott and refuse to deal with, and induce and compel others to boycott and refuse to deal with, those who do not establish, enforce, observe and adhere to the terms set out in subparagraphs (a) (b) and (c) above.

15. For the purpose of effectuating and carrying out the offense hereinabove described, the defendants, by agreement, understanding and concert of action, have done the things which, as hereinabove alleged, they conspired and agreed to do.

[fol. 12] V. Effects.

16. The effects of the offense hereinbefore alleged are and have been:

(a) To raise, fix, maintain and stabilize the wholesale and retail prices of alcoholic beverages shipped in interstate commerce into the State of Maryland and sold and distributed therein;

(b) To eliminate price competition among the defendant wholesalers and among retailers in the sale and distribution of alcoholic beverages shipped in interstate commerce into the State of Maryland;

(c) To eliminate price competition among defendant wholesalers and the other members of defendant wholesalers' association, and among members of defendant retailers' associations in the sale and distribution of alcoholic beverages shipped in interstate commerce into the State of Maryland;

(d) To eliminate direct sales of alcoholic beverages by manufacturers to monopoly counties acting as wholesalers;

(e) To raise the wholesale and retail prices of alcoholic beverages in Montgomery County;

(f) To require all interstate trade and commerce in alcoholic beverages to be channeled in the State of Maryland only through wholesalers; and

(g) To restrain and suppress interstate trade and commerce in alcoholic beverages not covered by fair trade contracts.

17. It has never been and is not now the purpose, intent, or effect of said offense to promote the purpose of the Miller-Tydings Act amendment to the Sherman Act (Act of Congress, August 17, 1937; 50 Stat. 693) as amended, or the McGuire Act (66 Stat. 631, July 14, 1952) or the Maryland Fair Trade Act, or to establish wholesale and retail prices on alcoholic beverages for the protection of the good will in the trade-marks, brands, or names of the manufacturers or wholesalers of such alcoholic beverages.

[fol. 13] VI. Jurisdiction and Venue.

18. The offense herein alleged has been entered into and carried out in part within the District of Maryland. During the period of said offense and within the applicable period of the statute of limitations, the defendants have performed within the District of Maryland many of the acts and things set forth in paragraph 14 herein.

COUNT TWO

1. The Grand Jury realleges all of the allegations of paragraphs 1 through 12 of Count (sic) One of this indictment.

IV. Combination and Conspiracy to Monopolize.

2. Beginning in or about the month of January 1950; the exact date being to the Grand Jurors unknown, and continuously thereafter up to and including the date of the presentation of this indictment, the defendants hereinbefore named, together with others to the Grand Jurors unknown, have entered into and engaged in an unlawful combination and conspiracy to monopolize the interstate trade and commerce in alcoholic beverages previously described herein in violation of Section 2 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" (U.S.C., Title 15, Section 2), as amended, commonly known as the Sherman Act.

3. The Grand Jury realleges all of the allegations of paragraphs 14 through 18 of Count One of this indictment.

COUNT THREE

1. The Grand Jury realleges all of the allegations of paragraphs 1 through 12 of Count One of this indictment.

IV. Attempt to Monopolize.

2. Beginning in or about the month of January 1950, the exact date being to the Grand Jurors unknown, and [fol. 14] continuously thereafter up to and including the date of the presentation of this indictment, the defendants

hereinbefore named, together with others to the Grand Jurors unknown, have been engaged in an attempt to monopolize the interstate trade and commerce in alcoholic beverages previously described herein in violation of Section 2 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" (U.S.C., Title 15, Section 2), as amended, commonly known as the Sherman Act.

3. In the aforesaid attempt to monopolize the defendants have done those things alleged in subparagraphs (a) through (d) of paragraph 14 of Count One of this indictment, which are hereby realleged.

4. The Grand Jury realleges all of the allegations of paragraphs 16 through 18 of Count One of this indictment.

(Signatures omitted)

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## IN UNITED STATES DISTRICT COURT

BILL OF PARTICULARS—Filed August 1, 1955

### Section II

The Government submits the following answers in part to the requests:

2. The Government cannot state the time or approximate time each defendant entered into the conspiracy charged in paragraph 13 of the indictment since the conspiracy was a continuous and constantly developing overall plan composed and consisting of numerous and shifting acts, transactions, understandings and agreements of the defendants throughout its life, from which the conspiracy and entry into it by each defendant is implied. The Government has no present knowledge that any of the defendants withdrew from the conspiracy or ceased to be a participant therein before April 6, 1955.

3. The Government has no evidence of a single express agreement among the defendants which constituted the [fol. 15] conspiracy. The conspiracy as a whole is implied from the course of conduct of all defendants. The evidence which the Government has is such that it cannot say whether the joining of each defendant in the conspiracy was effected by an express agreement or understanding. It is inferred from all of the course of conduct of each defendant and in connection with the course of conduct of other defendants, including statements made, actions taken and understandings entered into from time to time during the period of each defendant's participation.

— IN UNITED STATES DISTRICT COURT —

SUPPLEMENT TO BILL OF PARTICULARS—

Filed November 14, 1955

2. The Government infers the existence of a conspiracy from the entire course of conduct of all the defendants and does not know the exact time when the conspiracy was formed. It expects to show the existence of the conspiracy by evidence of the acts of the defendants beginning with the earliest acts shown by the documents hereinafter described. The Government also states that the earliest acts of some defendants, shown by such documents, justify an inference that those defendants were engaged in the conspiracy in 1947.

The Government states that each of the defendants engaged in a course of conduct from which the Government infers that such defendant joined in the offenses alleged in the indictment. The Government can not state the exact time at which each defendant joined the conspiracy but relies on the entire course of conduct of each defendant as proof of such defendant's joining the conspiracy at some time during that course of conduct. The following documents are evidence of the first act or acts of the course of conduct engaged in by each defendant; they show the first acts or acts of each defendant which such defendant

must be prepared to defend at trial. The Government does not know of any oral testimony which it will use to prove such acts.

[fol. 16]

IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS THE INDICTMENT AS TO MELROSE  
DISTILLERS, INC., A DISSOLVED MARYLAND  
CORPORATION—Filed June 27, 1955

Seward W. Eric, Harry J. Greenwald, Lester J. Milich, Edward F. O'Brien, Milton B. Seasonwein and Kasper H. Seidel, being all of the Directors of Melrose Distillers, Inc., a Maryland corporation, at the time of its dissolution, move the Court to dismiss the indictment in this case and each count thereof as to the said Defendant, Melrose Distillers, Inc., and as grounds for said Motion say:

1. Melrose Distillers, Inc., a Maryland Corporation was dissolved under the laws of Maryland on May 2, 1955, on which date Articles of Dissolution were received and approved by the State Tax Commission of Maryland.

2. Said corporation was duly dissolved by the unanimous consent of all of its stockholders on the date above set forth under and pursuant to the provisions of Article 23, Sections 72 to 78 inclusive, of the Annotated Code of Maryland, 1951 edition.

3. This Motion is presented prior to arraignment of the said Defendant and prior to pleas to the charges of the indictment.

4. Certificate of Dissolution of Melrose Distillers, Inc., is filed herewith as a part hereof.

5. This Motion is supported by the affidavit hereto attached.

Seward W. Eric, Harry J. Greenwald, Lester J. Milich, Edward F. O'Brien, Milton B. Seasonwein, Kasper H. Seidel, By Markell, Veazey & Gans, Hilary W. Gans.

[fol. 17]

ATTACHMENT TO MOTION TO DISMISS—CERTIFICATE AND  
ARTICLE OF DISSOLUTION

State Tax Commission  
31 Light Street  
Baltimore-2, Maryland

Melrose Distillers, Inc.,  
Baltimore, Maryland.

You are advised that the Articles of Dissolution of Melrose Distillers, Inc. has been received and approved by the State Tax Commission of Maryland this 2nd day of May, 1955 at 9:30 A.M. and will be recorded.

State Tax Commission of Maryland, By Albert W. Ward.

(Seal.)

Melrose Distillers, Inc.  
Articles of Dissolution

This is to Certify:

Melrose Distillers, Inc., a Maryland corporation having its principal office in the City of Baltimore, State of Maryland (hereinafter called the Corporation), hereby certifies to the State Tax Commission of Maryland, that:

First: The Corporation is hereby dissolved.

Second: The name of the Corporation is as hereinabove set forth, and the post office address of the principal office of the Corporation in the State of Maryland is No. 10 Light Street, City of Baltimore, Maryland.

Third: The name and post office address of the resident agent of the Corporation in the State of Maryland, service of process upon whom shall bind the Corporation in any action, suit or proceeding pending or hereafter instituted or filed against the Corporation for one year after dissolution and thereafter until the affairs of the Corporation are wound up is The Corporation Trust Incorporated, No. 10 Light Street, City of Baltimore, Maryland. Said resident agent is a corporation of this State.

Fourth: The name and Post office address of each of the directors of the Corporation are as follows:

[fol. 18]

Name	Post-Office Address
Seward W. Eric	350 Fifth Avenue, New York 1, N. Y.
Harry J. Greenwald	350 Fifth Avenue, New York 1, N. Y.
Lester J. Milich	350 Fifth Avenue, New York 1, N. Y.
Edward F. O'Brien	350 Fifth Avenue, New York 1, N. Y.
Milton B. Seasonwein	350 Fifth Avenue, New York 1, N. Y.
Kasper H. Seidel	350 Fifth Avenue, New York 1, N. Y.

Fifth: The name, title and post-office address of each of the officers of the Corporation are as follows:

Name	Title	Post-Office Address
Harry Jay Greenwald	President	350 Fifth Avenue, New York 1, N. Y.
Seward W. Eric	Vice-Presidents	350 Fifth Avenue, New York 1, N. Y.
Edward F. O'Brien	"	350 Fifth Avenue, New York 1, N. Y.
Milton B. Seasonwein	"	350 Fifth Avenue, New York 1, N. Y.
Kasper H. Seidel	"	350 Fifth Avenue, New York 1, N. Y.
Milton B. Seasonwein	Secretary	350 Fifth Avenue, New York 1, N. Y.
Mayer H. Kasperschmidt	Treasurer	350 Fifth Avenue, New York 1, N. Y.
John T. Beamer	Assistant Sec'y's	350 Fifth Avenue, New York 1, N. Y.
John J. Dahill	"	350 Fifth Avenue, New York 1, N. Y.
Lester J. Milich	"	350 Fifth Avenue, New York 1, N. Y.
James E. Woolsey	"	350 Fifth Avenue, New York 1, N. Y.
John J. Dahill	Assistant Treas.	350 Fifth Avenue, New York 1, N. Y.

[fol. 19] Sixth: There are no known creditors of the Corporation.

Seventh: These Articles of Dissolution are accompanied (sic) by Certificates of the Comptroller of the Treasury of the State of Maryland and of the following collectors of taxes (being all collectors of taxes in the list thereof heretofore supplied to the Corporation by the State Tax Commission of Maryland) stating in effect that all taxes levied on assessments made by the said Commission and billed by and payable to such collecting authorities by the Corporation have been paid, except taxes barred by Section 210 of Article 81 or otherwise, including taxes billed for the year in which the dissolution of the Corporation is to be effected, namely: None.

Eighth: A majority of the whole board of directors of the Corporation, by resolution adopted at a meeting of the board of directors duly convened and held on the 20th day of April, 1955, duly advised the dissolution of the Corporation and called a meeting of the stockholders to take action thereon.

Ninth: A consent in writing to the dissolution of the Corporation was signed by all the stockholders of the Corporation, such consent is filed with the records of the Corporation, and the dissolution of the Corporation has been duly advised by the board of directors and authorized by the stockholders of the Corporation in the manner and by the vote required by Article 23 of the Annotated Code of Maryland (L. 1951, ch. 135).

In Witness Whereof, Melrose Distillers, Inc. has caused these presents to be signed in its name and on its behalf by its President or one of its Vice Presidents and its corporate seal to be hereunto affixed and attached by its Secretary or one of its Assistant Secretaries, on the 27th day of April, 1955.

Melrose Distillers, Inc., By Kasper H. Seidel, Vice-President.

Attest: Milton B. Seasonwein, Secretary.

[fol. 20]

State of New York, County of New York, ss.:

I Hereby Certify that on April 27, 1955, before me, the subscriber, a Notary Public of the State of New York, personally appeared Kasper H. Seidel, Vice President of Melrose Distillers, Inc., a Maryland corporation, and in the name and on behalf of said corporation acknowledged the foregoing Articles of Dissolution to be the corporate act of said corporation; and at the same time personally appeared Milton B. Seasonwein and made oath in due form of law that he was Secretary of the meeting of the board of directors of said corporation at which the dissolution of the corporation therein set forth was authorized, and the matters and facts set forth in said Articles of Dissolution are true to the best of his knowledge, information and belief.

Witness my hand and notarial seal, the day and year last above written.

Nora A. Donovan, Notary Public.

(Seal)

### State Tax Commission of Maryland

This is to Certify That the within instrument is a true copy of the Articles of Dissolution of Melrose Distillers, Inc. as approved and received for record by the State Tax Commission of Maryland, May 2, 1955 at 9:30 o'clock A.M.

As Witness my hand and official seal of the said Commission at Baltimore this 4th day of May, 1955.

Albert W. Ward, Secretary.

(Seal)

[fol. 21]

### AFFIDAVIT OF MILTON B. SEASONWEIN

State of New York, County of New York, ss.:

I, Milton B. Seasonwein, being first duly sworn, depose and say:

I reside at 84 Penn Boulevard, Scarsdale, New York. I am Resident Attorney for Schenley Industries, Inc. and its

subsidiary corporations and have my office at 350 Fifth Avenue, New York 1, New York.

On September 24, 1952, the Federal Trade Commission filed a complaint (Docket No. 6048) against Schenley Industries, Inc. and certain of its subsidiaries, including CVA Corporation and Melrose Distillers, Inc. On June 18, 1953, an answer was filed. While the matter was referred to a Hearing Examiner, no hearings were ever held.

On October 27, 1953, the Board of Directors of Schenley Industries, Inc., approved the execution of the necessary stipulations required for the entry of a consent settlement in Docket No. 6048. On November 20, 1953, the stipulations were executed by the respondents in Docket No. 6048. On March 2, 1954, the consent settlement was approved by the Federal Trade Commission and mailed to each of the respondents on March 8, 1954. The consent settlement and the order to cease and desist entered in accordance therewith provided for the submission of a compliance report within one (1) year from the date of service upon the respondents.

The order to cease and desist created certain limitations on the operations of Schenley Industries, Inc. and its subsidiaries. These limitations made it necessary to arrange for the distribution in the United States of all of the alcoholic beverages (except beer) through a single sales company, thus necessitating the elimination of distribution by many subsidiaries, including Melrose Distillers, Inc., CVA Corporation and Dant Distillery and Distributing Corp.

Dant Distillery and Distributing Corp. had not been organized at the time of the service of the complaint by the Federal Trade Commission and was, therefore, not [fol. 22] named as a respondent in those proceedings. However, the cease and desist order applied to subsidiaries of Schenley Industries, Inc. which were not parties in the proceedings.

It was known, at the time execution of the stipulations relating to the consent settlement in Docket No. 6048 was authorized, that a reorganization of the corporate structure of the subsidiaries of Schenley Industries, Inc. would be required. For substantial commercial and legal reasons

such corporate reorganization took the form of the establishment of one corporation, with separate divisions operating under trade names as the selling company for the Schenley subsidiaries. For this purpose the corporate name of "Schenley Distributors, Inc." was changed to "Affiliated Distillers Brands Corp." after consideration of many other proposed names. The name change was effected as of December 27, 1954, and the single selling company set-up came into effect on January 1, 1955. As of the last mentioned date, Melrose Distillers, Inc., CVA Corporation and Dant Distillery and Distributing Corp. became inactive corporations. Counsel for the company was directed to effectuate the dissolution of said three corporations as soon as steps for that purpose could be taken by counsel.

The dissolution of the said three corporations was effectuated for the commercial and legal reasons above mentioned, none of which had anything to do with the indictment filed in the United States District Court for the District of Maryland.

Formal action with respect to the dissolution of the three corporations was approved at a meeting of the Board of Directors of Schenley Industries, Inc., on April 27, 1955. Similar action was taken by the Boards of Directors of the three corporations. The corporations were dissolved under the laws of Maryland (Melrose Distillers, Inc. and CVA Corporation) and Delaware (Dant Distillery and Distributing Corp.) on May 2, 1955.

Milton B. Seasonwein.

[fol. 23] Subscribed and sworn to before me this 23rd day of June, 1955.

Evelyn Boehm, Notary Public.

(Seal)

## IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS THE INDICTMENT AS TO DANT DISTILLERY  
AND DISTRIBUTING CORP., A DISSOLVED DELAWARE  
CORPORATION—Filed June 27, 1955

Harold Baum, Harold Morris and Edward B. Rohn, Jr., being all of the Directors of Dant Distillery and Distributing Corp., a Delaware corporation, at the time of its dissolution, move the Court to dismiss the indictment in this case and each count thereof as to the said Defendant, Dant Distillery and Distributing Corp., and as grounds for said Motion say:

1. Dant Distillery and Distributing Corp., a Delaware corporation, was dissolved under the laws of Delaware on May 2, 1955, on which date Articles of Dissolution were received and approved by the Office of the Secretary of State of the State of Delaware.

2. Said corporation was duly dissolved by the unanimous consent of all of its stockholders on the date above set forth under the laws of Delaware.

3. This Motion is presented prior to arraignment of the said Defendant and prior to pleas to the charges of the indictment.

4. Certificate of Dissolution of Dant Distillery and Distributing Corp. is filed herewith as a part hereof.

5. This Motion is supported by the affidavit hereto attached.

Harold Baum, Harold Morris, Edward B. Rohn, Jr.,  
By Markell, Veazey & Gans, Hilary W. Gans.

[fol. 24]

ATTACHMENT TO MOTION TO DISMISS—  
 CERTIFICATE OF DISSOLUTION.

State of Delaware  
 Office of Secretary of State

I, John N. McDowell, Secretary of State of the State of Delaware, do Hereby Certify that the Certificate of Incorporation of the "Dant Distributors, Inc.", was received and filed in this office the twenty-fifth day of February, A.D. 1953, at 11 o'clock A.M.;

And I do hereby further certify that the said "Dant Distributors, Inc.", filed a Certificate of Amendment of Certificate of Incorporation changing its corporate title to "Dant Distillery and Distributing Corp.", on the tenth day of March, A.D. 1953, at 11 o'clock A. M.;

And I do hereby further certify that the Certificate of Consent of Stockholders to Dissolution of the "Dant Distillery and Distributing Corp.", was received and filed in this office the second day of May, A.D. 1955, at 10 o'clock A.M.;

And I do hereby further certify that the Affidavit showing Publication of Certificate of Dissolution was received and filed in this office the second day of May, A.D. 1955, at 3 o'clock P.M.;

And I do hereby further certify that the aforesaid Corporation was duly dissolved according to the laws of the State of Delaware.

In Testimony Whereof, I have hereunto set my hand and official seal, at Dover, this second day of May in the year of our Lord one thousand nine hundred and fifty-five.

John N. McDowell, Secretary of State, M. D. Tomlinson, Ass't Secretary of State.

(Seal)

[fol. 25]

## AFFIDAVIT OF MILTON B. SEASONWEIN

State of New York, County of New York, ss.:

I, Milton B. Seasonwein, being first duly sworn, depose and say:

I reside at 84 Penn Boulevard, Scarsdale, New York. I am Resident Attorney for Schenley Industries, Inc. and its subsidiary corporations and have my office at 350 Fifth Avenue, New York 1, New York.

On September 24, 1952, the Federal Trade Commission filed a complaint (Docket No. 6048) against Schenley Industries, Inc. and certain of its subsidiaries, including CVA Corporation and Melrose Distillers, Inc. On June 18, 1953, an answer was filed. While the matter was referred to a Hearing Examiner, no hearings were ever held.

On October 27, 1953, the Board of Directors of Schenley Industries, Inc., approved the execution of the necessary stipulations required for the entry of a consent settlement in Docket No. 6048. On November 20, 1953, the stipulations were executed by the respondents in Docket No. 6048. On March 2, 1954, the consent settlement was approved by the Federal Trade Commission and mailed to each of the respondents on March 8, 1954. The consent settlement and the order to cease and desist entered in accordance therewith provided for the submission of a compliance report within one (1) year from the date of service upon the respondents.

The order to cease and desist created certain limitations on the operations of Schenley Industries, Inc. and its subsidiaries. These limitations made it necessary to arrange for the distribution in the United States of all of the alcoholic beverages (except beer) through a single sales company, thus necessitating the elimination of distribution by many subsidiaries, including Melrose Distillers, Inc., CVA Corporation and Dant Distillery and Distributing Corp.

Dant Distillery and Distributing Corp. had not been organized at the time of the service of the complaint by the Federal Trade Commission and was, therefore, not named as a respondent in these proceedings. However, the cease

[fol. 26] and desist order applied to subsidiaries of Schenley Industries, Inc. which were not parties in the proceedings.

It was known, at the time execution of the stipulations relating to the consent settlement in Docket No. 6048 was authorized, that a reorganization of the corporate structure of the subsidiaries of Schenley Industries, Inc. would be required. For substantial commercial and legal reasons such corporate reorganization took the form of the establishment of one corporation, with separate divisions operating under trade names as the selling company for the Schenley subsidiaries. For this purpose the corporate name of "Schenley Distributors, Inc." was changed to "Affiliated Distillers Brands Corp." after consideration of many other proposed names. The name change was effected as of December 27, 1954, and the single selling company set-up came into effect on January 1, 1955. As of the last mentioned date, Melrose Distillers, Inc., CVA Corporation and Dant Distillery and Distributing Corp. became inactive corporations. Counsel for the company was directed to effectuate the dissolution of said three corporations as soon as steps for that purpose could be taken by counsel.

The dissolution of the said three corporations was effectuated for the commercial and legal reasons above mentioned, none of which had anything to do with the indictment filed in the United States District Court for the District of Maryland.

Formal action with respect to the dissolution of the three corporations was approved at a meeting of the Board of Directors of Schenley Industries, Inc., on April 27, 1955. Similar action was taken by the Boards of Directors of the three corporations. The corporations were dissolved under the laws of Maryland (Melrose Distillers, Inc. and CVA Corporation) and Delaware (Dant Distillery and Distributing Corp.) on May 2, 1955.

Milton B. Seasonwein.

[fol. 27] Subscribed and sworn to before me this 23rd day of June, 1955.

Evelyn Boehm, Notary Public.

(Seal)

## IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS THE INDICTMENT AS TO CVA CORPORATION,  
A DISSOLVED CORPORATION—Filed June 27, 1955

Henrietta Auerbach, Jean A. Montencourt, Paul I. Niderman, J. B. Popkin and Harry G. Serlis, being all of the Director (sic) of CVA Corporation, a Maryland corporation, at the time of its dissolution, move the Court to dismiss the Indictment in this case and each count thereof as to the said defendant, CVA Corporation, and as grounds for said Motion say:

1. CVA Corporation, a Maryland corporation, was dissolved under the laws of Maryland on May 2, 1955, on which date Articles of Dissolution were received and approved by the State Tax Commission of Maryland.

2. Said corporation was duly dissolved by the unanimous consent of all of its stockholders on the date above set forth under and pursuant to the provisions of Article 23, Sections 72 to 78 inclusive, of the Annotated Code of Maryland, 1951 edition.

3. This Motion is presented prior to arraignment of the said defendant and prior to pleas to the charges of the Indictment.

4. Certificate of Dissolution of CVA Corporation is filed herewith as a part hereof.

5. This Motion is supported by the affidavit hereto attached.

Henrietta Auerbach, et al., By Markell, Veazey & Gans, Hilary W. Gans, Attorneys for CVA Corporation.

[fol. 28]

ATTACHMENT TO MOTION TO DISMISS—  
 CERTIFICATE AND ARTICLES OF DISSOLUTION.

State Tax Commission  
 31 Light Street  
 Baltimore-2, Md.

CVA Corporation,  
 Baltimore, Maryland.

You are advised that the Articles of Dissolution of CVA Corporation has been received and approved by the State Tax Commission of Maryland this 2nd day of May, 1955 at 9:30 A.M. and will be recorded.

State Tax Commission of Maryland, By Albert W. Ward.

CVA Corporation  
 Articles of Dissolution

This is to Certify:

CVA Corporation, a Maryland corporation having its principal office in the City of Baltimore, State of Maryland (hereinafter called the Corporation), hereby certifies to the State Tax Commission of Maryland, that:

First: The Corporation is hereby dissolved.

Second: The name of the Corporation is as hereinabove set forth, and the post office address of the principal office of the Corporation in the State of Maryland is No. 10 Light Street, City of Baltimore, Maryland.

Third: The name and post office address of the resident agent of the Corporation in the State of Maryland, service of process upon whom shall bind the Corporation in any action, suit or proceeding pending or hereafter instituted or filed against the Corporation for one year after dissolution and thereafter until the affairs of the Corporation are wound up, is The Corporation Trust Incorporated, No. 10 Light Street, City of Baltimore, Maryland. Said resident agent is a corporation of this State.

[fol. 29] Fourth: The name and post office address of each of the directors of the corporation are as follows:

Name	Post-Office Address
Henrietta Auerbach	350 Fifth Avenue, New York 1, N. Y.
Jean A. Montenecourt	350 Fifth Avenue, New York 1, N. Y.
Paul I. Nederman	582 Market Street, San Francisco, California.
J. B. Popkin	350 Fifth Avenue, New York 1, N. Y.
Harry G. Serlis	582 Market Street, San Francisco, California.

Fifth: The name, title and post-office address of each of the officers (sic) of the Corporation are as follows:

Name	Title	Post-Office Address
Harry G. Serlis	Chairman of the Board	582 Market Street, San Francisco, Calif.
Paul I. Nederman	President	582 Market Street, San Francisco, Calif.
Jean A. Montenecourt	Vice Presidents	350 Fifth Avenue, New York 1, N. Y.
Max Sager	"	Chanin Building, 122 East 42nd Street, New York, N. Y.
Leonard J. Rosenfeld	Secretary	350 Fifth Avenue, New York 1, N. Y.
Jesse Katner	Treasurer	350 Fifth Avenue, New York 1, N. Y.
[fol. 30]		
Beatrice Dunn	Assistant Secretaries	350 Fifth Avenue, New York 1, N. Y.
Frank M. Famental	"	350 Fifth Avenue, New York 1, N. Y.
Milton B. Seasonwein	"	350 Fifth Avenue, New York 1, N. Y.
James E. Woolsey	"	582 Market Street, San Francisco, Calif.
Henrietta Auerbach	Assistant Treasurers	350 Fifth Avenue, New York 1, N. Y.
J. B. Popkin	"	350 Fifth Avenue, New York 1, N. Y.

Sixth: There are no known creditors of the Corporation.

Seventh: These Articles of Dissolution are accompanied by Certificates of the Comptroller of the Treasury of the State of Maryland and of the following collectors of taxes (being all collectors of taxes in the list thereof heretofore supplied to the Corporation by the State Tax Commission of Maryland) stating in effect that all taxes levied on assessments made by the said Commission and billed by and payable to such collecting authorities by the Corporation have been paid, except taxes barred by Section 210 of Article 81 or otherwise, including taxes billed for the year in which the dissolution of the Corporation is to be effected, namely: None.

Eighth: A majority of the whole board of directors of the Corporation, by resolution adopted at a meeting of the board of directors duly convened and held on the 20th day of April, 1955, duly advised the dissolution of the Corporation and called a meeting of the stockholders to take action thereon.

Ninth: A consent in writing to the dissolution of the Corporation was signed by all the stockholders of the [fol. 31] Corporation, such consent is filed with the records of the Corporation, and the dissolution of the Corporation has been duly advised by the board of directors and authorized by the stockholders of the Corporation in the manner and by the vote required by Article 23 of the Annotated Code of Maryland (L. 1951, ch. 135).

In Witness Whereof, CVA Corporation has caused these presents to be signed in its name and on its behalf by its President or one of its Vice Presidents and its corporate seal to be hereunto affixed and attested by its Secretary or one of its Assistant Secretaries, on the 27th day of April, 1955.

CVA Corporation, By Jean A. Montenecourt, Vice President.

Attest: Leonard J. Rosenfeld, Secretary.

(Seal)

State of New York, County of New York, ss.:

I Hereby Certify that on April 27, 1955, before me, the subscriber, a Notary Public of the State of New York, personally appeared Jean A. Montenecourt, Vice President of CVA Corporation, a Maryland corporation, and in the name and on behalf of said corporation acknowledged the foregoing Articles of Dissolution to be the corporate act of said corporation; and at the same time personally appeared Leonard J. Rosenfeld and made oath in due form of law that he was Secretary of the meeting of the board of directors of said corporation at which the dissolution of the corporation therein set forth was authorized, and the matters and facts set forth in said Articles of Dissolution are true to the best of his knowledge, information and belief.

[fol. 32] Witness my hand and notarial seal, the day and year last above written.

Nora A. Donovan, Notary Public.

(Seal)

State Tax Commission of Maryland

"This is to Certify That the within instrument is a true copy of the Articles of Dissolution of CVA Corporation as approved and received for record by the State Tax Commission of Maryland, May 2, 1955 at 9:30 o'clock A.M.

As Witness my hand and official seal of the said Commission at Baltimore this 4th day of May, 1955.

Albert W. Ward, Secretary.

**AFFIDAVIT OF MILTON B. SEASONWEIN**

State of New York, County of New York, ss.:

I, Milton B. Seasonwein, being first duly sworn, depose and say:

I reside at 84 Penn Boulevard, Scarsdale, New York. I am Resident Attorney for Schenley Industries, Inc. and

its subsidiary corporations and have my office at 350 Fifth Avenue, New York 1, New York.

On September 24, 1952, the Federal Trade Commission filed a complaint (Docket No. 6048) against Schenley Industries, Inc. and certain of its subsidiaries, including CVA Corporation and Melrose Distillers, Inc. On June 18, 1953, an answer was filed. While the matter was referred to a Hearing Examiner, no hearings were ever held.

On October 27, 1953, the Board of Directors of Schenley Industries, Inc., approved the execution of the necessary stipulations required for the entry of a consent settlement in Docket No. 6048. On November 20, 1953, the stipulations were executed by the respondents in Docket No. 6048. On March 2, 1954, the consent settlement was approved by the Federal Trade Commission and mailed to [fol. 33] each of the respondents on March 8, 1954. The consent settlement and the order to cease and desist entered in accordance therewith provided for the submission of a compliance report within one (1) year from the date of service upon the respondents.

The order to cease and desist created certain limitations on the operations of Schenley Industries, Inc. and its subsidiaries. These limitations made it necessary to arrange for the distribution in the United States of all of the alcoholic beverages (except beer) through a single sales company, thus necessitating the elimination of distribution by many subsidiaries, including Melrose Distillers, Inc., CVA Corporation and Dant Distillery and Distributing Corp.

Dant Distillery and Distributing Corp. had not been organized at the time of the service of the complaint by the Federal Trade Commission and was, therefore, not named as a respondent in these proceedings. However, the cease and desist order applied to subsidiaries of Schenley Industries, Inc. which were not parties in the proceeding.

It was known, at the time execution of the stipulations relating to the consent settlement in Docket No. 6048 was authorized, that a reorganization of the corporate structure of the subsidiaries of Schenley Industries, Inc. would be required. For substantial commercial and legal reasons such corporate reorganization too (sic) the form of the

establishment of one corporation, with separate divisions operating under trade names as the selling company for the Schenley subsidiaries. For this purpose the corporate name of "Schenley Distributors, Inc." was changed to "Affiliated Distillers Brands Corp." after consideration of many other proposed names. The name change was effected as of December 27, 1954, and the single selling company set-up came into effect on January 1, 1955. As of the last mentioned date, Melrose Distillers, Inc., CVA Corporation and Dant Distillery and Distributing Corp. became inactive corporations. Counsel for the company was directed to effectuate the dissolution of said three corporations as soon as steps for that purpose could be taken by counsel.

[fol. 34] The dissolution of the said three corporations was effectuated for the commercial and legal reasons above mentioned, none of which had anything to do with the indictment filed in the United States District Court for the District of Maryland.

Formal action with respect to the dissolution of the three corporations was approved at a meeting of the Board of Directors of Schenley Industries, Inc., on April 27, 1955. Similar action was taken by the Boards of Directors of the three corporations. The corporations were dissolved under the laws of Maryland (Melrose Distillers, Inc. and CVA Corporation) and Delaware (Dant Distillery and Distributing Corp.) on May 2, 1955.

Milton B. Seasonwein.

Subscribed and sworn to before me this 23rd day of June, 1955.

Evelyn Boehm, Notary Public.

(Seal)

IN UNITED STATES DISTRICT COURT

STIPULATION AS TO PLEADINGS ETC.

It is hereby stipulated and agreed by and between the parties to this case, through their respective counsel, that any Defendant may without prejudice, by a paper signed by his counsel and filed in this case, adopt in whole or in part any pleading, motion, subpoena, or other paper there-

tofore filed in this case by any other Defendant, without the necessity for setting forth said pleading, motion, subpoena, or other paper in full.

Dated: June 21, 1955

(Signatures omitted)

[fol. 35]

IN UNITED STATES DISTRICT COURT

ORDER APPROVING STIPULATION

It is the 29th day of June, 1955, by the United States District Court for the District of Maryland—

Ordered that the foregoing Stipulation dated June 21, 1955, be and it is hereby approved.

Roszel C. Thomsen, U. S. District Court, Chief Judge.

IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS THE INDICTMENT AS TO MARYLAND  
INSTITUTE OF WINE AND SPIRIT DISTRIBUTORS, INC.,  
ET AL.—Filed November 29, 1955

Pursuant to Rule 12 of the Federal Rules of Criminal Procedure and leave of Court heretofore granted, defendants Maryland Institute of Wine and Spirit Distributors, Inc. and I. William Schimmel, and each of them, move the Court as follows:

A.

To dismiss Counts One and Two of the Indictment, and each of them, on the following grounds appearing upon the face of the Indictment, and/or the Particulars thereof heretofore furnished by the Government, and/or the admissions and concessions made by the Government in open Court with respect thereto:

1. Counts One and Two, and each of them, do not, within the meaning and requirements of Rule 7 of the Federal Rules of Criminal Procedure or otherwise, constitute

plain, concise and definite written statements of the essential facts constituting the offenses charged, or attempted to be charged, or any offense over which this Court has jurisdiction, but, on the contrary, are fatally defective in that they are too vague, indefinite, confusing, uncertain in meaning and contradictory in their allegations to require defense thereto, or to enable the defendants adequately to prepare defenses thereto, or to enable the defendants adequately to plead former conviction or acquittal [fol. 36] or double jeopardy to said Indictment or to any later indictment or information which may be brought against them, and so vague, indefinite, confusing, uncertain in meaning and contradictory in their allegations that any trial or conviction of law and contravene the Fifth Amendment to the Constitution of the United States.

2. Count One fails to charge an offense violative of Section 1 of the Sherman Act, or any offense over which this Court has jurisdiction, and Count Two fails to charge an offense violative of Section 2 of the Sherman Act, or any offense over which this Court has jurisdiction, for the reasons (a) that the alleged acts and conduct of the defendants charged, or attempted to be charged, therein, and the purposes, objectives and effects thereof, were permitted, sanctioned and encouraged by the announced governmental policy and law of the State of Maryland and the statutes (including Maryland Code, Art. 2B, Secs. 104 and 105 and Art. 83, secs. 102-115) and Court decisions of said State, which state policy and law regarding alcoholic beverages has preempted the field of policy and law relating thereto and to the marketing thereof and is paramount by reason of the Twenty-first Amendment to the Constitution of the United States (b) that hence said alleged acts and conduct of the defendants are not within the ambit of the Sherman Act or forbidden by its provisions; (c) that the offenses charged, or attempted to be charged, would promote and further the announced governmental policy and law of the State of Maryland, and the objectives thereof, and hence constituted activity protected from the reach of the Sherman Act; (d) that, if the Sherman Act should be construed to apply to, forbid and punish said alleged acts and conduct of the defendants, it would, to that

extent, conflict with, burden and obstruct the said policy and law of the State of Maryland, and the objectives thereof, and would be unconstitutional and void to that extent as in contravention of the Twenty-first Amendment of the Constitution of the United States; and (e) that any trial or conviction of the defendants on said Counts One and Two would conflict with said policy, law, statutes [fol. 37] and Court decisions of the State of Maryland and the administration of said policy and laws, and would deny to the defendants their rights under the same and contravene the Twenty-first Amendment to the Constitution of the United States.

3. Count One fails to charge an offense violative of Section 1 of the Sherman Act, or any offense over which this Court has jurisdiction, and Count Two fails to charge an offense violative of Section 2 of the Sherman Act, or any offense over which this Court has jurisdiction, because, by reason of the Twenty-first Amendment to the Constitution of the United States, any restraints and/or monopolization of trade and commerce in alcoholic beverages which are within the ambit of the Sherman Act and forbidden by its provisions must be factually unreasonable, within the Rule of Reason, in the light of the purposes, objectives, effects and all the surrounding circumstances thereof, including the policy and law of the State of Maryland mentioned in paragraph 2 hereof, and the objectives thereof, and relevant federal laws and statutes, including the Miller-Tydings Act (U. S. C. Title 15, Sec. 1), the McGuire Act (U. S. C. Title 15, Sec. 45), the Clayton Act as amended by the Robinson-Patman Act (U. S. C. Title 15, Sec. 13a); and Counts One and Two fail to charge facts showing that the alleged acts and conduct of the defendants charged therein were so unreasonable but, on the contrary, allege facts showing that the same were reasonable and justified within the Rule of Reason.

## B.

To dismiss Count Two of the Indictment on the ground that it fails to charge an offense violative of Section 2 of the Sherman Act, or any offense over which the Court has

jurisdiction, because, except for an unwarranted legal conclusion of the pleader, it alleges no facts showing, or tending to show, that the nature, purposes, objectives or effects of the combination and conspiracy charged, or attempted to be charged, therein were to monopolize any part of trade or commerce in alcoholic beverages and/or to forestall, [fol. 38] regrade or engross said trade or commerce, or any part thereof, and/or to exclude or deter any person or persons from the market or from engaging in said trade or commerce, or any part thereof, and/or unify and corner in one or a number of persons said trade or commerce or any part thereof, but, on the contrary, said Count Two, on its face, and as explained and limited by the Particulars heretofore furnished by the Government and by the admissions and concessions with respect thereto, and with respect to the facts which the Government proffers to prove in support thereof, made by the Government in open Court, affirmatively shows that Count Two charges no more than that charged, or attempted to be charged, by Count One, which, in turn, does not allege facts constituting a combination or conspiracy to monopolize; that all combinations and conspiracies in restraint of trade or commerce violative of Section 1 of the Sherman Act, including the combination and conspiracy attempted to be charged in Count One, are not also combinations and conspiracies violative of Section 2 of the Sherman Act; that, if the Sherman Act should otherwise be construed and applied, it would to that extent be unconstitutional and void as in contravention of the Fifth Amendment to the Constitution of the United States; and that, if the defendants should be tried and/or convicted on both Counts One and Two, they would be placed in double jeopardy and denied due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

### C.

In the alternative to B above, to require the Government at this time to elect either Count One or Count Two of the Indictment and to dismiss whichever Count is not elected, for the reason that Count One and Count Two both charge facts constituting one, and only one, alleged offense

(namely, either a combination and conspiracy in restraint of trade violative of Section 1 of the Sherman Act or a combination and conspiracy to monopolize violative of Section 2 of the Sherman Act). That identity of the two Counts and of the offense attempted to be charged by each [fol. 39] is shown on the face of the Indictment by the identity *in haec verba* of the factual allegations of each as distinguished from the legal conclusions of the pleader set forth therein. This identity is confirmed and strengthened by the Particulars heretofore furnished by the Government in answer to defendants' Request for Particulars No. 96 which are as follows:

"96. , Furnish the information herein requested (the other numbered requests) in respect of every count of the indictment."

Answer to 96. "The same course of conduct is alleged in all three Counts of the indictment and the proof of that course or conduct under Count One will be relied upon as proof of the other Counts."

This identity is further confirmed and strengthened by the concession made by the Government in open Court on September 14, 1955, which is as follows:.

"That is what we want, Your Honor, when we stated, in answer to 96, that the proof would consist of the same course of conduct in all three counts, there would be no variation as far as proof is concerned on either the count as distinguished from any other count." (See Transcript p. 329).

That the above concession was made advisedly by the Government is established by its reiteration thereof on page 12 of its Brief In Opposition to Defendants' Exceptions to its Bill of Particulars as follows:.

"In this case, the Government has answered (Answer No. 96) that it relies on the course of conduct and the same evidence of that course of conduct, under all Counts of the indictment."

The above quoted Particulars and concession are binding upon the Government as to the identity of the offense

charged in both said Counts, and, further preclude it from contending that Counts One and Two are alternative charges to be ruled upon only in the light of whether the [fol. 40] proof to be later submitted in support of each will differ and, if so, to what extent.

Trial of the defendants upon both of two Counts, which are admittedly pure duplication and identical in nature, *allegata* and *probata*, and each factually charging an identical offense to be proved by identical evidence, is not permitted by the Sherman Act as properly construed; the Sherman Act, if construed to permit such trial upon both Counts, would be unconstitutional and void, to that extent, as in contravention of the Fifth Amendment to the Constitution of the United States; and such trial would place the defendants in double jeopardy and deny to them due process of law in contravention of said Fifth Amendment.

To dismiss Counts One and Two of the Indictment as to the defendant I. William Schimmel, on the grounds that he, and the other individual defendants, are specifically charged therein only in the disjunctive with having "authorized, ordered, or done some or all of the acts constituting and in furtherance of the offense hereinafter charged" and are therefore not directly charged with having combined and conspired in violation of the Sherman Act; and the defendant, I. William Schimmel, hereby adopts and incorporates herein the "Motion to Dismiss Indictment" heretofore filed by defendants Milton S. Kronheim and Bernard Cohen.

John Henry Lewin, Attorney for Maryland Institute of Wine and Spirit Distributors, Inc., and I. William Schimmel.

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#### IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS THE INDICTMENT AS TO CVA CORPORATION,  
A DISSOLVED MARYLAND CORPORATION—Filed  
November 30, 1955

Henrietta Auerbach, Jean A. Montenecourt, Paul I. Nederman, J. B. Popkin and Harry G. Serlis, being all of

[fol. 41] the Directors of CVA, a Maryland corporation, at the time of its dissolution, move the Court to dismiss the Indictment in this case and each Count thereof as to the said Defendant, CVA Corporation, and as grounds for said Motion say:

1. Said Defendant, CVA Corporation, incorporates in this Motion by reference and refiles as a part hereof the Motion to Dismiss filed on behalf of this Defendant as a dissolved Maryland corporation on June 27, 1955.

2. Said Defendant, pursuant to the approved Stipulation of the parties, incorporates in this paper by reference and adopts as its Motion to Dismiss the "Motion to Dismiss" heretofore filed in the case by the Defendants, Maryland Institute of Wine and Spirit Distributors, Inc., and I. William Schimmel, filed on the 29th day of November, 1955.

Henrietta Auerbach, Jean A. Montencourt, Paul I. Nederman, J. B. Popkin, Harry G. Serlis, By Markell, Veazey & Gans, /s/ Hilary W. Gans, Attorneys for CVA Corporation.

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IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS THE INDICTMENT AS TO MELROSE  
DISTILLERS, INC., A DISSOLVED MARYLAND CORPORATION—  
Filed November 30, 1955

Seward W. Eric, Harry J. Greenwald, Lester J. Milich, Edward F. O'Brien, Milton B. Seasonwein, Kasper H. Seidel, being all of the Directors of Melrose Distillers, Inc., a Maryland corporation, at the time of its dissolution, move the Court to dismiss the Indictment in this case and each [fol. 42] count thereof as to the said Defendant, Melrose Distillers, Inc., and as grounds for said Motion say:

1. Said Defendant, Melrose Distillers, Inc., incorporates in this Motion by reference and refiles as a part hereof the Motion to Dismiss filed on behalf of this Defendant as a dissolved Maryland corporation on June 27, 1955.

2. Said Defendant, pursuant to the approved Stipulation of the parties, incorporates in this paper by reference and adopts as its Motion to Dismiss the "Motion to Dismiss" heretofore filed in the case by the Defendants, Maryland Institute of Wine and Spirit Distributors, Inc., and I. William Schimmel filed on the 29th day of November, 1955.

A Seward W. Eric, Harry J. Greenwald, Lester J. Milich, Edward F. O'Brien, Milton B. Seasonwein, Kasper H. Seidel, By Markwell, Veazey and Gans, /s/ Hilary W. Gans, Attorneys for Melrose Distillers, Inc.

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IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS THE INDICTMENT AS TO DANT DISTILLERY AND DISTRIBUTING CORP., A DISSOLVED DELAWARE CORPORATION—Filed November 30, 1955

Harold Baum, Harold Morris and Edward B. Rohn, Jr., being all of the Directors of Dant Distillers and Distributing Corp., a Delaware corporation, at the time of its dissolution, move the Court to dismiss the Indictment in this case and each count thereof as to the said Defendant, Dant Distillery and Distributing Corp., and as grounds for said Motion say:

[fol. 43] 1. Said Defendant, Dant Distillery and Distributing Corp., incorporates in this Motion by reference and refiles as a part hereof the Motion to Dismiss filed on behalf of this Defendant as a dissolved Delaware corporation on June 27, 1955.

2. Said Defendant, pursuant to the approved Stipulation of the parties, incorporates in this paper by reference and adopts as its Motion to Dismiss the "Motion to Dismiss" heretofore filed in the case by the Defendants, Maryland Institute of Wine and Spirit Distributors, Inc., and I. William Schimmel, filed on the 29th day of November, 1955.

Harold Baum, Harold Morris, Edward B. Rohn, Jr.,  
By Markell, Veazey and Gans, /s/ Hilary W. Gans,  
Attorneys for Dant Distillery and Distributing  
Corp.

## IN UNITED STATES DISTRICT COURT

OPINION—Filed January 10, 1956

Thomsen, Chief Judge:

The Indictment in this case charges two associations of retailers, one association of wholesalers, fourteen manufacturers, seven wholesalers, and thirty-one individuals connected with them, engaged in the alcoholic beverage industry, with violations of Sections 1 and 2 of the Sherman Act, 15 U. S. C. A. 1, 2.

Count One charges a conspiracy "to raise, fix, maintain, and stabilize the wholesale and retail prices of alcoholic beverages shipped into the State of Maryland from manufacturers located outside the State of Maryland" in restraint of trade and commerce and in violation of Section 1. The terms of the conspiracy are alleged to have been: (a) that fair trade prices be required to be established; and that [fol. 44] manufacturers and wholesalers be required to enforce the observance of said prices and sell only to retailers who comply; (b) that retailers be required, induced or compelled to observe and adhere to such fair trade prices; (c) that no alcoholic beverages be sold directly by a manufacturer to the Department of Liquor Control for Montgomery County or to the Liquor Control Boards of other monopoly counties, or be sold to said purchasers indirectly through a wholesaler at prices less than the wholesaler's resale prices; and (d) that manufacturers, wholesalers, and retailers boycott and refuse to deal with, and induce and compel others to boycott and refuse to deal with, those who do not establish, enforce, observe and adhere to those terms. Count Two charges a conspiracy to monopolize said trade and commerce, in violation of Section 2. The terms of this conspiracy are alleged to have been the same as those of the conspiracy alleged in Count One. Count Three charges an attempt to monopolize said trade and commerce, also in violation of Section 2.

The defendants have moved to dismiss Counts One and Two on the grounds: (1) that they are too vague, confusing and contradictory to charge any offense under the Sherman Act; (2) that the State of Maryland, following the Twenty-

first Amendment, has by statute and court decisions preempted the whole field of marketing alcoholic beverages in Maryland, that there is a conflict between the policy and terms of the Maryland law and the policy and terms of the Sherman Act; that the acts and conduct alleged to constitute the conspiracy in this case are permitted or at least not prohibited by the Maryland law, and implement the State policy; therefore they are not within the ambit of the Sherman Act, and any prosecution thereunder for such acts and conduct would be unconstitutional; and (3) that under the so-called "Rule of Reason" the alleged acts and conduct were justified by the circumstances, including all the applicable Federal and State laws and policies.<sup>1</sup>

[fol. 45] The defendants have also moved to dismiss Count Two on the ground that it does not allege a conspiracy to monopolize violative of Section 2 of the Sherman Act, or, in the alternative, that the government be required to elect between Count One and Count Two, and to dismiss one or the other on the ground that Count Two alleges no conspiracy different from the conspiracy alleged in Count One.

Certain individual defendants have filed separate motions to dismiss on the ground of vagueness, and separate motions to dismiss have been filed on behalf of three corporations which have been dissolved since the indictment.

Since the government has not yet supplied certain particulars of the offense charged in Count Three, the time for filing motions to dismiss that count has been extended.

## The Indictment

### *Count One*

I. *The Defendants.* Paragraphs 1 to 7 identify the defendants: twenty-four corporations, including two associa-

<sup>1</sup> The Miller-Tydings Act, 15 U. S. C. A. 1; the McGuire Act, 15 U. S. C. A. 45; the Robinson-Patman Act, 15 U. S. C. A. 13(a); the Maryland Fair Trade Act, Annotated Code of Maryland, 1951 Ed., Art. 83, sec. 102-110; the Maryland Unfair Sales Act, Annotated Code of Maryland, 1951 Ed., Art. 83, sec. 111-115; the Maryland Alcoholic Beverage Act, Annotated Code of Maryland, 1951 Ed., Art. 2B; the Sherman Act, 15 U. S. C. A. 1; The Clayton Act, 15 U. S. C. A. 12, et seq.; and the Federal Trade Commission Act, 15 U. S. C. A. 41, et seq.

tions of retailers, one association of wholesalers, fourteen manufacturers, seven wholesalers, and thirty-one individuals connected with the corporations.

II. *Definitions.* Paragraph 8 defines "alcoholic beverages" to exclude beer, ale, porter and stout, and defines "manufacturer" as a person who operates a plant within the United States for distilling, rectifying, blending, fermenting, or bottling any alcoholic beverage, or imports into the United States any alcoholic beverage from outside the United States, or is a distributor of alcoholic beverages selling to a wholesaler for resale to a retailer.

[fol. 46] III. *Nature of Trade and Commerce Involved.* Paragraph 9 alleges that alcoholic beverages are marketed in the State of Maryland in a continuous flow of shipments from manufacturers located outside the State, through wholesalers and retailers, to the consuming public; that under the laws of the State, alcoholic beverages shipped and sold by manufacturers are sold through the Department of Liquor Control for Montgomery County, and Liquor Control Boards in other monopoly counties, and wholesalers licensed as such under the laws of Maryland to county dispensaries and other retailers.

Paragraph 10 makes the following allegations: Alcoholic beverages shipped and sold by manufacturers are customarily sold in Montgomery County to the Department, in conformity with the laws of the State. The Department sells alcoholic beverages through county liquor dispensaries to the consuming public. The Department of Liquor Control for Montgomery County, under the laws of the State of Maryland, has customarily purchased as a wholesaler alcoholic beverages direct from manufacturers. In the counties of Caroline, Dorchester, Harford, Kent, Somerset, Worcester, and Wicomico, in the State of Maryland, alcoholic beverages are sold, under the laws of the State, through county liquor dispensaries. Said counties, however, have customarily purchased alcoholic beverages from wholesalers licensed as such under the laws of Maryland; and said counties have not customarily operated as wholesalers. Said counties, including Montgomery County, are

monopoly counties. In all other counties in the State of Maryland in which alcoholic beverages are sold, such alcoholic beverages are shipped and sold by manufacturers to licensed wholesalers, who in turn sell to retailers licensed as such who sell to the consuming public. Said counties are open counties.

Paragraphs 11 and 12 allege that, in 1954, 90% of the 6,235,971 wine gallons of alcoholic beverages sold by retailers in Maryland was produced outside the State; that about 5% of the total was sold through county dispensaries, mostly in Montgomery County; and that there were 32 [fol. 47] wholesalers and 8,783 retailers in Maryland, apart from boards and dispensaries in monopoly counties.

IV. *The Conspiracy.* Paragraph 13 alleges beginning about January, 1950, and continuously thereafter up to the date of the indictment, the defendant and other persons to the Grand Jurors unknown, "knowingly have entered into and engaged in an unlawful combination and conspiracy to raise, fix, maintain, and stabilize the wholesale and retail prices of alcoholic beverages shipped into the State of Maryland from manufacturers located outside the State of Maryland," in restraint of the aforesaid trade and commerce, and in violation of Section 1 of the Sherman Act.

Paragraph 14 alleges: "The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action among the defendants and others to the Grand Jurors unknown, the substantial terms of which have been and are:

"(a) That so-called 'fair-trade' prices for alcoholic beverages be required to be established, and that manufacturers and wholesalers be required to enforce the observance of said prices and sell alcoholic beverages only to those retailers who observe and adhere to said prices;

"(b) That retailers be required to observe and adhere to, or be induced and compelled to observe and adhere to, 'fair-trade' prices on alcoholic beverages established as aforesaid;

"(c) That no alcoholic beverages sold in the State of Maryland be sold directly by a manufacturer to the Department of Liquor Control for Montgomery County or the Liquor Control Boards of other monopoly counties, or be sold to said purchasers indirectly through a wholesaler at prices less than his customary resale prices; and

"(d) that manufacturers, wholesalers, and retailers shall boycott and refuse to deal with, those who do not establish, enforce, observe and adhere to the terms set out in subparagraphs (a), (b) and (c) above."

[fol. 48]. Paragraph 15 alleges: "For the purpose of effectuating and carrying out the offense hereinabove described, the defendants, by agreement, understanding and concert of action, have done the things which, as hereinbefore alleged, they conspired and agreed to do."

V. *Effects*. Paragraph 16 alleges that the effects of the offense have been: (a) To raise, fix, maintain and stabilize the wholesale and retail prices of alcoholic beverages shipped in interstate commerce into the State of Maryland and sold and distributed therein; (b) To eliminate price competition among the defendant wholesalers and among retailers in the sale and distribution of alcoholic beverages shipped in interstate commerce into the State of Maryland; (c) To eliminate price competition among defendant wholesalers and the other members of defendant wholesalers' association, and among members of defendant retailers' associations in the sale and distribution of alcoholic beverages shipped in interstate commerce into the State of Maryland; (d) To eliminate direct sales of alcoholic

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<sup>2</sup> Paragraphs 83 to 86 of the Bill of Particulars state:

"83 & 84. In explanation, paragraphs 16(b) and 16(c) of the indictment, allege that the effects of the offense are and have been: under paragraph 16(b), to eliminate price competition between each defendant wholesaler and other defendant wholesalers, individually and as a group; and, under paragraph 16(c), to eliminate price competition between defendant wholesalers, individually and as a group, and other wholesalers, individually and as a group, who are members of MIWSD.

"85 & 86. In explanation, paragraphs 16(b) and 16(c) of the indictment allege that the effects of the offense are and have been:

beverages by manufacturers to monopoly counties acting as wholesalers; (e) To raise the wholesale and retail prices of alcoholic beverages in Montgomery County; (f) To require all interstate trade and commerce in alcoholic beverages to be channeled in the State of Maryland only through wholesalers; and (g) To restrain and suppress interstate [fol. 49] trade and commerce in alcoholic beverages not covered by fair trade contracts.

Paragraph 17 alleges: "It has never been and is not now the purpose, intent, or effect of said offense to promote the purpose of the Miller-Tydings Act amendment to the Sherman Act (Act of Congress, August 17, 1937: ~~50~~ Stat. 693) as amended, or of the McGuire Act (66 Stat. 631, July 14, 1952) or the Maryland Fair Trade Act, or to establish wholesale and retail prices on alcoholic beverages for the protection of the good will in the trade-marks, brands, or names of the manufacturers or wholesalers of such alcoholic beverages."

VI. *Jurisdiction and Venue.* Paragraph 18 alleges facts satisfying the requirements of jurisdiction and venue and of the applicable statute of limitations.

### *Count Two*

Count Two realleges all of the allegations of paragraphs 1 through 12 and 14 through 18 of Count One. In place of paragraph 13 of Count One, it alleges that beginning about January, 1950, and continuously thereafter, the defendants, together with others to the Grand Jurors unknown, "have entered into and engaged in an unlawful combination and conspiracy to monopolize the interstate trade and commerce in alcoholic beverages previously described herein in violation of Section 2 of the \* \* \* Sherman Act."

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under paragraph 16(b), to eliminate price competition between retailers, including each and all retailers in Maryland without regard to membership in any association; and under paragraph 16(c), to eliminate price competition between each and all retailers who is or are a member or members of MSLBA and/or MPLSA."

### *Count Three*

Count Three is identical with Count Two except that it alleges "an attempt to monopolize the interstate trade and commerce in alcoholic beverages previously described herein in violation of Section 2 of the \* \* \* Sherman Act," and that "in the aforesaid attempt to monopolize the defendants have done those things alleged in subparagraphs (a) through (d) of paragraph 14 of Count One."

. . . . .

[fol. 76]

### V.

#### *Motion To Dismiss As Against Dissolved Corporations*

The indictment in this case was filed on April 6, 1955. On June 27, 1955, prior to arraignment, separate motions to dismiss the indictment as to Dant Distilling and Distributing Company, a Delaware corporation, and Melrose Distillers, Inc., and CVA Corporation, Maryland corporations, were filed by their respective directors on the ground that each of said corporations had been dissolved on May 2, 1955, by the filing of articles of dissolution in the state of its incorporation and by unanimous consent of all of its stockholders pursuant to the statutes of the state of its incorporation. An affidavit in support of said motions shows that each of these corporations was a wholly owned subsidiary of Schenley Industries, Inc., another defendant. Formal action with respect to the dissolution of the three corporations was approved at a meeting of the board of directors of Schenley Industries, Inc., on April 27, 1955. The Federal Trade Commission on September 24, 1952, had issued a complaint (Docket No. 6048) against Schenley Industries, Inc., and certain of its subsidiaries, including Melrose and CVA. Dant had not been organized at that time. Pursuant to stipulations, the Federal Trade Commission entered a cease and desist order on March 2, 1954. This order "created certain limitations on the operations of Schenley Industries, Inc., and its subsidiaries" which "made it necessary to arrange for the distribution in the

United States of all of the alcoholic beverages (except beer) through a single sales company". The name of Sehenley Distributors, Inc., was changed to "Affiliated Distillers Brands Corp." on December 27, 1954, and it became the single selling company on January 1, 1955. Counsel for the company was directed to effectuate the dissolution [fol. 77] of Melrose, CVA and Dant. The affidavit states that their dissolution "was effectuated for the commercial and legal reasons above-mentioned, none of which had anything to do with the indictment" in the present case.

The first point to be decided is what law governs the question. This criminal proceeding is brought under a federal statute, and the question whether it can be prosecuted against a deceased person or a corporation which has ceased to exist must be determined by federal law. On the other hand, the question when corporate existence ends in the case of a corporation in dissolution or which has been dissolved depends on the law of the state of its creation. *Burnes Coal Corp. vs. Retail Coal Merchants Association*, (4 Cir.) 128 F. 2d 645.

"We start with the firmly established premise that a dissolved corporation may thereafter be proceeded against either criminally or civilly only if authorized by the laws of the state of its incorporation. *Oklahoma Natural Gas Co. vs. Oklahoma*, 273 U. S. 257, 259, 47 S. Ct. 391, 71 L. Ed. 634; *Chicago Title and Trust Co. vs. Forty-One Thirty-Six Wilcox Bldg. Corp.*, 302 U. S. 120, 125, 58 S. Ct. 125, 82 L. Ed. 147; *Defense Supplies Corp. vs. Lawrence Warehouse Co.*, 336 U. S. 631, 634-635, 69 S. Ct. 762, 93 L. Ed. 931. \* \* \* " *United States vs. P. F. Collier & Son Corp.*, (7 Cir.) 208 F. 2d 936, at 937.

The contested issue; therefore, must turn upon the Delaware and Maryland statutes dealing with the dissolution of corporations. The controlling provision of the Delaware law is Section 42, Revised Code of Delaware, 1935, ch. 65, as amended in 1941, ch. 132, sec. 11, 8 Del. C., sec. 278. This section is entitled "Continuation of Corporation after Dissolution for Purposes of Suit, etc.", and provides as follows:

"All corporations, whether they expire by their own limitation, or are otherwise dissolved, shall nevertheless be continued for the term of three years from such expiration or dissolution bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, and to divide their capital stock but not for the purpose of continuing the business for which said corporation shall have been established; provided, however, that with respect to any action, suit or proceeding begun or commenced by or against the corporation prior to such expiration or dissolution and with respect to any action, suit or proceeding begun or commenced by or against the corporation within three years after the date of such expiration or dissolution, such corporation shall only, for the purpose of such actions, suits or proceedings so begun or commenced be continued bodies corporate beyond said three-year period and until any judgments, orders, or decrees therein shall be fully executed."

Does the word "suits" as contained in the initial portion of this section, or the words "any action, suit, or proceeding" as contained in the proviso, encompass a criminal prosecution such as the instant case?

The exact question has been presented to the Court of Appeals of three Circuits. The Sixth and Tenth Circuits held that sufficient corporate life did not continue after dissolution to permit the prosecution of the criminal case. *U. S. vs. Line Material Co.*, (6 Cir.) 202 F. 2d 929; *U. S. vs. Safeway Stores*, (10 Cir.) 140 F. 3d 834. The Seventh Circuit held the contrary. *U. S. vs. P. F. Collier & Son Corp.*, 208 F. 2d 936.<sup>12</sup> The decision of the Seventh Circuit was based in large part upon:

(1) The Federal Rules of Criminal Procedure. The Seventh Circuit said: "We agree that the word 'suit' or the

<sup>12</sup> See also *In re Grand Jury Subpoenas Duces Tecum*, (D. C. S. D. N. Y.) 72 F. Supp. 1013; *U. S. vs. Cigarette Merchandisers Association, Inc., et al.*, (D. C. S. D. N. Y.) Nov. 23, 1955, *Weinfeld, J.*, Civil No. 144-105.

word 'action' standing alone might reasonably be held as not including a criminal prosecution, but when the word [fol. 79] 'proceeding' is added we think a combination is presented which is well near inclusive of all forms of litigation. \* \* \* Any doubt on this score is readily dispelled by reference to the Federal Rules of Criminal Procedure, 18 U. S. C. A. Rule 2 provides, 'These rules are intended to provide for the just determination of every criminal proceeding.' In scores of instances, a criminal prosecution is referred to as a 'proceeding.' The court cited paragraphs (a), (b) and (c) of Rule 21 as typical.

(2) The decision of the Fourth Circuit in *Bahen & Wright, Inc. vs. Commissioner*, 176 F. 2d 538, which construed the same Delaware statute as follows:

" \* \* \* The Delaware statute explicitly provides for continued corporate existence for as long as may be necessary to reach a final determination of any 'proceeding' as well as any 'action or suit' begun by or against a corporation within three years of its dissolution. The word 'proceeding' is obviously broader than action or suit and should be given full effect in order to achieve the fundamental purpose of the statute."

(3) The decision of the Supreme Court in Delaware in *Addy vs. Short*, 89 A. 2d 136, wherein the court made some observations pertinent to the question at issue here. Referring to sec. 42, the Delaware court said:

"During the three-year period of winding up, the corporation functions exactly as it had functioned before dissolution, with the important qualification that its powers are limited to closing its affairs and do not extend to carrying on the business for which it was established. But as concerns the property it had at the time of dissolution, its title and possession are unimpaired. Whatever rights it had, of whatever nature, are preserved in full vigor during the three-year period. Any other conclusion would contravene the plain language of the statute."

The Seventh Circuit, in *U. S. vs. P. F. Collier & Son Corp.*, supra, then said:

[fol. 80] "If, as the court stated, every right possessed by a corporation at the time of dissolution is preserved in full vigor during the three-year period, we see no reason why by the same token its liabilities, both civil and criminal, are not also preserved. Following the statement lastly quoted, the court further stated:

"The suggestion that the act of dissolution in itself in some fashion works a forfeiture or extinguishment of a legal right, by analogy to the death of an individual, is therefore on the face of the statute unsound."

"Again if dissolution by reason of the statute works no extinguishment of a legal right, we discern no reason why it works an extinguishment of a legal liability, whether civil or criminal."

This decision is in line with principles announced by the Fourth Circuit in analogous cases. In *Barnes Coal Corp. vs. Retail Coal Merchants Association*, (4 Cir.) 128 F. 2d 645, a triple damage suit under 15 U. S. C. A. sec. 15, the Court, speaking through Chief Judge Parker, said:

"On the second question, we entertain no doubt as to the survivability of the cause of action when the statute creating it is interpreted in the light of the common law rule relating to survival. While there might be some doubt as to this were we to look only to the ancient decisions, we think that the rule is to be determined, not merely by a consideration of the state of the common law at the time of the enactment of the statute *de bonis asportatis* in the reign of Edward III, or even by a consideration of the common law rule at the time of the American Revolution, but in the light of its subsequent development and the decisions interpreting it. It must be remembered, in this connection, that the common law is not a static but a dynamic and growing thing. Its rules arise from the application of reason to the changing conditions of society. \* \* \*" 128 F. 2d at 648.

[fol. 81] Business corporations such as are involved in this case did not even exist at common law. Moreover, at common law, criminal proceedings did not lie against such corporations as did exist. Finally, dissolution at common law was equated to civil death, with total extinction of corporate existence, upon which even the corporate realty reverted to the donors thereof, the corporate personality escheated to the State, and debts either to or from the corporation were extinguished. 1 Blackstone, *Commentaries*, 467-485.

The corporate dissolution provided for by today's statute law is an entirely different conception, and one which requires continued corporate life. This principle is recognized and embodied in the Delaware statute, of which Judge Soper said: "Statutes of this type are broadly remedial." 176 F. 2d at 539.

The principle is also recognized and embodied in the Maryland statute which is applicable to defendants Melrose Distillers, Inc., and CVA Corporation. Art. 23, sec. 72 of the Maryland Code contains the following provision:

"(b) The dissolution of the corporation shall be effective when the articles of dissolution have been accepted for record by the Commission, provided, however, that the corporation *shall continue in existence* for the purpose of paying, satisfying and discharging any existing debts and obligations, collecting and distributing its assets, and doing all other acts required to liquidate and wind up its business and affairs." (emphasis supplied).

Sec. 78(a) of Art. 23 provides:

"The dissolution of a corporation shall not relieve its stockholders, directors or officers from any obligations and liability imposed on them by law; nor shall such dissolution abate any pending suit or proceeding by or against the corporation, and all such suits may be continued with such substitution of parties, if any, as the court directs."

[fol. 82] In *Diamond Match Co. vs. State Tax Commission*, 175 Md. 234, a tax case, the Court of Appeals of Maryland referred to the dissolution statutes as follows:

"The provisions are broad, and intended to cover every liability, although of an undetermined amount, and embrace the potential obligation contingent upon a liability to pay taxes subsequently levied by statute upon an assessable basis of a precedent date."

I conclude that under the applicable Delaware and Maryland statutes, the corporate existence of the dissolved corporations continues to a sufficient extent to permit the prosecution of this criminal proceeding.

#### IN UNITED STATES DISTRICT COURT

ORDER OF COURT ON MOTIONS—Filed January 30, 1956

This case coming on to be heard upon (1) the Motion of the Defendants Maryland Institute of Wine and Spirit Distributors, Inc., and I. William Schimmel, to dismiss the first and second counts of the Indictment upon various grounds, (2) the Motion of various other Defendants adopting the same or parts thereof, (3) the Motion of Milton S. Kronheim and Bernard Cohen to dismiss the Indictment for failure to charge an offense against individual Defendants as required by Rule 7(c) of the Federal Rules of Criminal Procedure, (4) the Motions of various other Defendants adopting the same, and (5) the Motion of the Defendants, Dant Distilling and Distributing Company, Melrose Distillers, Inc., and C.V.A. Corporation to dismiss the Indictment as to them on the grounds of their dissolution as corporations, counsel for the parties were heard and the proceedings read and considered.

It is thereupon, this 30th day of January, 1956, for the reasons set forth in the Court's Opinion filed herein on the 16th day of January, 1956, by the United States District Court for the District of Maryland,

[fol. 83] Ordered:

1. That the United States of America be and it is hereby directed to file with the Clerk of this Court, on or before the 10th day of February, 1956, its election whether it will proceed to trial under Count One or Count Two of the Indictment and that one of the said Counts not so elected be thereupon dismissed;

2. That all other of the said Motions to Dismiss be and they are hereby denied, without prejudice, however, to the right of the Defendants, or any of them, to renew and raise for reconsideration at the trial the counts constituting the grounds of the said Motions set forth in Paragraphs Two and Three of Section A of the Motion to Dismiss filed on behalf of the Maryland Institute of Wine and Spirit Distributors, Inc., and I. William Schimmel;

3. That this order is without prejudice to the right of the Defendants, or any of them, to file before trial motions to dismiss the Indictment, or any Count thereof, (including renewal of the present motions, hereby denied, or any of them, if warranted by further particulars filed subsequent to the original Motions) within ten days from the time of the last furnishing of particulars by the Government as ordered or permitted by this Court.

/s/ Roszel C. Thomsen, Chief Judge, United States District Court.

[fol. 88]

# IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS, OR IN THE ALTERNATIVE, TO REQUIRE ELECTION OF COUNTS—Filed February 15, 1956

The Defendants, Schenley, Industries, Inc., Schenley Distributors, Inc., Melrose Distillers, Inc., Dant Distilling and Distributing Company, CVA Corporation, Ralph T. Heymsfeld, Murrel J. Ades, Newton Kook and Max Sager, by their attorney, move the Court, pursuant to Rule 12 of the Federal Rules of Criminal Procedure, (a) to dismiss Count Three of the Indictment, and (b) in the alternative, to re-

quire the Government to elect either Count One, Count Two or Count Three of the Indictment and to dismiss Count Three if not elected.

These Defendants, pursuant to the approved Stipulation of the parties, incorporate in this paper by reference and adopt as their grounds for the above Motion the grounds set forth in the Motion filed by the Defendants, Maryland Institute of Wine and Spirit Distributors, Inc., and I. Wm. Schimmel, on the 10th day of February, 1956.

Hilary W. Gans, Attorney for Schenley Industries, Inc., Schenley Distributors, Inc., Melrose Distillers, Inc., Dant Distilling and Distributing Company, CVA Corporation, Ralph T. Heymfeld, Murrel J. Ades, Newton Kook and Max Sager.

# IN UNITED STATES DISTRICT COURT

## ORDER DENYING MOTION

The Defendants, Maryland Institute of Wine and Spirit Distributors, Inc., and I. William Schimmel, having on January 30, 1956 filed a "Motion to Dismiss or in the alternative to require election of counts", various other Defendants having thereafter adopted the same motion or part [fol. 89] thereof, and the Court having considered the motions and grounds stated therein, it is:

Ordered: that the Motion of the Defendants, Maryland Institute of Wine and Spirit Distributors, Inc., and I. William Schimmel to dismiss or in the alternative to require election of counts, filed January 30, 1956 and the Motions of the other Defendants, adopting the same or parts thereof, be and they are hereby dismissed without prejudice; however, to the right of the Defendants or any of them renew the Motions hereby dismissed at any appropriate time hereafter.

/s/ Rozel C. Thomsen, Chief Judge.

Filed June 13, 1957.

IN UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MARYLAND.

No. 23212 Criminal—Indictment for Vio. U. S. C.  
Title 15, Secs. 1 and 2, as amended.

UNITED STATES OF AMERICA,

v.

MELROSE DISTILLERS, INC.

JUDGMENT—January 6, 1958

On this 6th day of January, 1958 came the attorney for the government and the defendant appeared "by counsel".

It Is Adjudged that the defendant has been convicted upon its plea of Nolo Contendere, which was accepted by the Court, of the offense of (Counts Nos. 1, 2 and 3) Conspiracy in restraint of trade and commerce in Alcoholic Beverages, etc., and the court having asked the defendant [fol. 90] whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant pay a fine of Five Thousand Dollars (\$5,000.00) on the 1st count of the Indictment, imposition of sentence suspended as to the 2nd and 3rd counts of the Indictment, and to pay its proportionate share of the costs.

Roszel C. Tomsen, Chief Judge, United States District Court.

IN UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MARYLAND

No. 23212 Criminal—Indictment for Vio. E. S. C.  
Title 15, Secs. 1 and 2, as amended.

UNITED STATES OF AMERICA,

v.

DANT DISTILLING & DISTRIBUTING CO.

JUDGMENT—January 6, 1958

On this 6th day of January, 1958 came the attorney for the government and the defendant appeared "by counsel".

It Is Adjudged that the defendant has been convicted upon its plea of Nolo Contendere, which was accepted by the Court, of the offense of (Counts Nos. 1, 2 and 3) Conspiracy in restraint of trade and commerce in Alcoholic Beverages, etc., and the court having asked the defendant [fol. 91] whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is, guilty as charged and convicted.

It Is Adjudged that the defendant pay a fine of Five Thousand Dollars (\$5,000.00) on the 1st count of the Indictment, imposition of sentence suspended as to the 2nd count of the Indictment, and to pay a fine of Twenty-Five Hundred Dollars (\$2,500.00) on the 3rd count of the Indictment, fines to be cumulative, making a total fine of Seventy-Five Hundred Dollars (\$7,500.00), and to pay its proportionate share of the costs.

Roszel C. Thomsen, Chief Judge, United States District Court.

IN UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MARYLAND

No. 23212 Criminal—Indictment for Vio. U. S. C.  
Title 15, Secs. 1 and 2, as amended.

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UNITED STATES OF AMERICA,

v.

CVA CORPORATION

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JUDGMENT—January 6, 1958

On this 6th day of January, 1958 came the attorney for the government and the defendant appeared "by counsel".

It Is Adjudged that the defendant has been convicted upon its plea of Nolo Contendere, which was accepted by [fol. 92] the Court, of the offense of (Counts Nos. 1, 2 and 3) Conspiracy in restraint of trade and commerce in Alcoholic Beverages, etc., and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant pay a fine of Five Thousand Dollars (\$5,000.00) on the 1st count of the Indictment, imposition of sentence suspended as to the 2nd count of the Indictment and to pay a fine of One Thousand Dollars (\$1,000.00) on the 3rd count of the Indictment, fines to be cumulative, making a total fine of Six Thousand Dollars (\$6,000.00), and to pay its proportionate share of the costs.

Rozel C. Thomsen, Chief Judge, United States District Court.

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[fol. 101]

## IN UNITED STATES DISTRICT COURT

## EXCERPTS

ANNOTATED CODE OF MARYLAND 1951 EDITION AS AMENDED

[fol. 104]

## ARTICLE 23—CORPORATIONS

## Section 72. (Procedure for Voluntary Dissolution.)

(b) The dissolution of the corporation shall be effective when the articles of dissolution have been accepted for record by the Commission, provided, however, that the corporation shall continue in existence for the purpose of paying, satisfying and discharging any existing debts and obligations, collecting and distributing its assets, and doing all other acts required to liquidate and wind up its business and affairs.

Section 78. (Effect of Dissolution.) (a) The dissolution of a corporation shall not relieve its stockholders, directors or officers from any obligations and liability imposed on them by law; nor shall such dissolution abate any pending suit or proceeding by or against the corporation, and all such suits may be continued with such substitution of par-[fol. 105] ties, if any, as the court directs. No receiver shall institute suit except by order of the court appointing him; and such suit may be brought in his own name as receiver or, notwithstanding its dissolution, in the name of the corporation, to his use.

## EXCERPTS FROM ACTS OF GENERAL ASSEMBLY OF MARYLAND

## 1957 SESSION—CHAPTER 399

An Act . . . to repeal and re-enact with amendments, Section 78 of Article 23 of the Annotated Code of Maryland (1951 Edition), title "Corporations", sub-title "Dissolution".

Sec. 11. *And be it further enacted by the General Assembly of Maryland*, That Section 78 of Article 23 of the Annotated Code of Maryland (1951 Edition), title "Corporations", sub-title "Dissolution" \* \* \* be and they are hereby repealed and reenacted, with amendments, to read as follows:

78. (Effect of Dissolution) (a) The dissolution of a corporation shall not relieve its stockholders, directors or officers from any obligations and liability imposed on them by law; [nor shall such dissolution abate any pending suit or proceeding by or against the corporation, and all such suits may be continued with such substitution of parties, if any, as the court directs. No receiver shall institute suit except by order of the court appointing him; and such suit may be brought in his own name as receiver or, notwithstanding its dissolution, in the name of the corporation, to his use].

\* \* \* \* \*

Sec. 44. *And be it further enacted by the General Assembly of Maryland*, That this Act shall take effect June 1, 1957. Approved March 28, 1957.

Explanation: [Brackets] indicate matter stricken from existing law.

[fol. 107]

IN UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

Criminal No. 23212

\* [Title omitted]

NOTICE OF APPEAL TO THE UNITED STATES  
COURT OF APPEALS

Filed—Jan. 21, 1958—R. M. F. Williams, Jr., Clerk

Name and address of Appellant: Melrose Distillers, Inc.,  
Empire State Building, New York 1, N. Y.

Name and address of Appellant's Attorney: Hilary W.  
Gans, 1904 First National Bank Building, Baltimore 2,  
Maryland.

Offense: In Count One conspiracy to restrain, in Count Two conspiracy to monopolize, and in Count Three attempt to monopolize interstate trade and commerce in alcoholic beverages in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, 26 Stat. 209, as amended, 15 U.S.C. 1, 2, commonly known as the Sherman Act.

Judgment appealed from: The indictment was returned April 6, 1955. On June 27, 1955, a motion was filed on behalf of this defendant, Melrose Distillers, Inc., to dismiss the indictment on the ground that on May 2, 1955, it had been dissolved as a corporation. On January 10, 1956, the District Court overruled this defendant's motion to dismiss the indictment. The defendant then pleaded not guilty.

On January 6, 1958, by leave of court the defendant withdrew its plea of not guilty and pleaded nolo contendere which was accepted by the District Court. The judgment of the District Court, dated January 6, 1958, was that the defendant Melrose Distillers, Inc. pay a fine of Five Thousand Dollars (\$5,000.00) on the First Count of the indictment; that imposition of sentence be suspended as to the Second and Third Counts of the indictment, and that the defendant pay its proportionate share of the costs.

Melrose Distillers, Inc. hereby appeals to the Circuit Court of Appeals for the Fourth Circuit from the above stated judgment.

Dated January 16, 1958.

Hilary W. Gans, Attorney for Appellant.

Copy mailed to Leon H. A. Pierson, Esquire, United States Attorney, P. O. Building, Baltimore 2, Maryland, on January 16, 1958.

Hilary W. Gans

[fol. 108]

IN UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

No. 23212 Criminal

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UNITED STATES OF AMERICA,

vs.

MELROSE DISTILLERS, INC.

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STATEMENT OF DOCKET ENTRIES

Filed—Jan. 21, 1958—R. M. F. Williams, Jr., Clerk

1. Indictment for Vio. U.S.C., Title 15, Secs. 1 and 2, as amended, (Conspiracy in restraint of trade and commerce in Alcoholic Beverages, etc.) filed April 6, 1955.
2. Arraignment, January 6, 1958.
3. Plea entered to Indictment, "Nolo Contendere" which was accepted by the Court on January 6, 1958.
4. Judgment: That the defendant pay a fine of Five Thousand Dollars (\$5,000.00) on the 1st count of the Indictment, imposition of sentence suspended as to the 2nd and 3rd counts of the Indictment, and to pay its proportionate share of the costs.
5. Notice of Appeal filed, January 16, 1958.
6. Dated: January 17, 1958.

Wilfred W. Butschky, Clerk, by Arthur J. Robertson, Chief Deputy Clerk.

[fol. 109]

IN UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

Criminal No. 23212

[Title omitted]

NOTICE OF APPEAL TO THE UNITED STATES  
COURT OF APPEALS

Filed—Jan. 21, 1958—R. M. F. Williams, Jr., Clerk

Name and address of Appellant: C V A Corporation, Empire State Building, New York 1, N. Y.

Name and address of Appellant's Attorney: Hilary W. Gans, 1904 First National Bank Building, Baltimore 2, Maryland.

Offense: In Count One conspiracy to restrain, in Count Two conspiracy to monopolize, and in Count Three attempt to monopolize interstate trade and commerce in alcoholic beverages in violation of Sections 1 and 2 of the act of Congress of July 2, 1890, 26 Stat. 209, as amended, 18 U.S.C. 1, 2, commonly known as the Sherman Act.

Judgment appealed from: The indictment was returned April 6, 1955. On June 27, 1955, a motion was filed on behalf of this defendant, C V A Corporation, to dismiss the indictment on the ground that on May 2, 1955, it had been dissolved as a corporation. On January 10, 1956, the District Court overruled this defendant's motion to dismiss the indictment. The defendant then pleaded not guilty.

On January 6, 1958, by leave of court, the defendant withdrew its plea of not guilty and pleaded nolo contendere which was accepted by the District Court. The judgment of the District Court, dated January 6, 1958, was that the defendant, C V A Corporation, pay a fine of Five Thousand Dollars (\$5,000.00) on the First Count of the indictment; that imposition of sentence be suspended as to the Second Count of the indictment, and that the defendant pay a fine of One Thousand Dollars

(\$1,000.00) on the Third Count of the indictment, such fines to be cumulative, making a total fine of Six Thousand Dollars (\$6,000.00), and that the defendant pay its proportionate share of the costs.

C V A Corporation hereby appeals to the Circuit Court of Appeals for the Fourth Circuit from the above stated judgment.

Dated January 16, 1958.

Hilary W. Gans, Attorney for Appellant.

Copy mailed to Leon H. A. Pierson, Esquire, United States Attorney, P. O. Building, Baltimore 2, Maryland, on January 16, 1958.

Hilary W. Gans

[fol. 110]

IN UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

No. 23212 Criminal

UNITED STATES OF AMERICA,

VS.

CVA CORPORATION.

STATEMENT OF DOCKET ENTRIES

Filed Jan. 21, 1958—R. M. F. Williams, Jr., Clerk

1. Indictment for Vio. U.S.C., Title 15, Secs. 1 and 2, as amended, (Conspiracy in restraint of trade and commerce in Alcoholic Beverages, etc.) filed April 6, 1955.
2. Arraignment, January 6, 1958.
3. Plea entered to Indictment, "Nolo Contendere" which was accepted by the Court on January 6, 1958.
4. Judgment: That the defendant pay a fine of Five Thousand Dollars (\$5,000.00) on the 1st-count of the

Indictment, imposition of sentence suspended as to the 2nd count of the Indictment and to pay a fine of One Thousand Dollars (\$1,000.00) on the 3rd count of the Indictment, fines to be cumulative, making a total fine of Six Thousand Dollars (\$6,000.00), and to pay its proportionate share of the costs.

5. Notice of Appeal filed, January 16, 1958.

6. Dated: January 17, 1958.

Attested:

Wilfred W. Butschky, Clerk, by Arthur J. Robertson, Chief Deputy Clerk.

[fol. 111]

IN UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

Criminal No. 23212

[Title omitted]

NOTICE OF APPEAL TO THE UNITED STATES  
COURT OF APPEALS

Filed—Jan. 21, 1958—R. M. F. Williams, Jr., Clerk

Name and address of Appellant: Dant Distillery and Distributing Corporation, Empire State Building, New York 1, N. Y.

Name and address of Appellant's Attorney: Hilary W. Gans, 1904 First National Bank Building, Baltimore 2, Maryland.

Offense: In Count One conspiracy to restrain, in Count Two conspiracy to monopolize, and in Count Three attempt to monopolize interstate trade and commerce in alcoholic beverages in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, 26 Stat. 209, as amended, 15 U.S.C. 1, 2, commonly known as the Sherman Act.

Judgment appealed from: The indictment was returned April 6, 1955. On June 27, 1955, a motion was filed on

behalf of this defendant, Dant Distillery and Distributing Corporation, to dismiss the indictment on the ground that on May 2, 1955, it had been dissolved as a corporation. On January 10, 1956, the District Court overruled this defendant's motion to dismiss the indictment. The defendant then pleaded not guilty.

On January 6, 1958, by leave of court, the defendant withdrew its plea of not guilty and pleaded nolo contendere which was accepted by the District Court. The judgment of the District Court, dated January 6, 1958, was that the defendant Dant Distillery and Distributing Corporation pay a fine of Five Thousand Dollars (\$5,000.00) on the First Count of the indictment; that imposition of sentence be suspended as to the Second Count of the indictment, and that the defendant pay a fine of Twenty-five Hundred Dollars (\$2500.00) on the Third Count of the indictment, such fines to be cumulative, making a total fine of Seventy-five Hundred Dollars (\$7500.00), and that the defendant pay its proportionate share of the costs.

Dant Distillery and Distributing Corporation hereby appeals to the Circuit Court of Appeals for the Fourth Circuit from the above stated judgment.

Dated January 16, 1958.

Hilary W. Gans, Attorney for Appellant.

Copy mailed to Leon H. A. Pierson, Esquire, United States Attorney, P. O. Building, Baltimore 2, Maryland, on January 16, 1958.

Hilary W. Gans

[fol. 112]

IN UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

No. 23212 Criminal

UNITED STATES OF AMERICA,

vs.

DANT DISTILLERY AND DISTRIBUTING CORPORATION.

STATEMENT OF DOCKET ENTRIES

Filed—Jan. 21, 1958—R. M. F. Williams, Jr., Clerk

1. Indictment for Vio. U.S.C., Title 15, Secs. 1 and 2, as amended, (Conspiracy in restraint of trade and commerce in Alcoholic Beverages, etc.) filed April 6, 1955.
2. Arraignment, January 6, 1958.
3. Plea entered to Indictment, "Nolo Contendere" which was accepted by the Court on January 6, 1958.
4. Judgment: That the defendant pay a fine of Five Thousand Dollars (\$5,000.00) on the 1st count of the Indictment, imposition of sentence suspended as to the 2nd count of the Indictment, and to pay a fine of Twenty-Five Hundred Dollars (\$2,500.00) on the 3rd count of the Indictment, fines to be cumulative, making a total fine of Seventy-Five Hundred Dollars (\$7,500.00), and to pay its proportionate share of the costs.
5. Notice of Appeal filed, January 16, 1958.
6. Dated: January 17, 1958.

Wilfred W. Butschky, Clerk, by Arthur J. Robertson, Chief Deputy Clerk.

[fol. 113]

IN UNITED STATES COURT OF APPEALS

January 21, 1958, appearance of Hilary W. Gans entered for the appellants.

January 21, 1958, appearance of Leon H. A. Pierson, United States Attorney, entered for the appellee.

January 30, 1958, appearance of Wilford L. Whitley, Jr., Attorney, Department of Justice, entered for the appellee.

April 10, 1958, record on appeal filed.

May 1, 1958, brief and appendix for appellants filed.

May 21, 1958, motion of appellee for permission to file brief in excess of fifty pages filed.

ORDER GRANTING SPECIAL PERMISSION TO APPELLEE TO FILE  
BRIEF IN EXCESS OF FIFTY PRINTED PAGES—  
Filed May 24, 1958.

Upon the motion of the appellee, by its counsel, and for good cause shown,

Special permission is hereby granted the appellee in the above entitled case to file a brief in excess of 50 printed pages but not exceeding 61 printed pages.

May 23, 1958.

Simon E. Sobeloff, Chief Judge, Fourth Circuit.

May 26, 1958, brief of appellee filed.

May 29, 1958, reply brief for appellants filed.

June 4, 1958, appearance of Robert S. Marx entered for the appellants.

June 4, 1958, appearance of John C. Fricano, Attorney, [fol. 114] Department of Justice, entered for the appellee.

. . . . .

Minute entry of Argument and Submission—June 4, 1958 (omitted in printing).

[fol. 115]

IN UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

No. 7608.

MELROSE DISTILLERS, INC., C V A CORPORATION, and DANT  
DISTILLERY AND DISTRIBUTING CORPORATION, Appellants,

*versus.*

UNITED STATES OF AMERICA, Appellee.

Appeals from the United States District Court  
for the District of Maryland, at Baltimore

Argued June 4, 1958.

Before SOPER and HAYNSWORTH, Circuit Judges, and MOORE,  
District Judge.

Robert S. Marx (Roy G. Holmes; Hilary W. Gans; Mar-  
kell, Veazey & Gans, and Nichols, Wood, Marx & Ginter  
on brief) for Appellants, and Wilford L. Whitley, Jr.,  
Attorney, Department of Justice, (Victor R. Hanseh,  
Assistant Attorney General; George H. Schueller, At-  
torney, Department of Justice, and Leon H. A. Pierson,  
United States Attorney, on brief) for Appellee.

[fol. 116] OPINION—Decided August 29, 1958

MOORE, District Judge:

Appellants Melrose Distillers, Inc., and C V A Corpora-  
tion are dissolved Maryland corporations. Appellant Dant  
Distillery and Distributing Corporation is a dissolved Dela-  
ware corporation. They were convicted along with numer-  
ous other defendants not involved here on their plea of nolo  
contendere to a three count indictment charging conspiracy  
to fix wholesale and retail prices of alcoholic beverages  
shipped into the State of Maryland by outside manufac-  
turers, and to monopolize and attempt to monopolize in-  
terstate trade and commerce there in violation of Sections

1 and 2 of the Sherman Act. The indictment was returned on April 6, 1955. The corporations were all dissolved on May 2, 1955. The plea of nolo contendere was filed on January 6, 1958. Prior to their pleas of nolo contendere, appellants had pleaded not guilty and had moved to dismiss the indictment on the grounds, so far as pertinent here, (1) that each of them had been dissolved prior to the plea of nolo contendere, and (2) that the alleged acts and conduct of defendants charged in the indictment "were permitted, sanctioned, and encouraged" by the announced governmental policy and law of the State of Maryland.

The questions involved in appellants' motions in the District Court to dismiss the indictment survive the plea of nolo contendere. *Universal Milk Bottle Service v. United States*, 6 Cir.; 188 F.2d 959. Hence, appellants would be entitled to a reversal of their conviction notwithstanding the plea of nolo contendere should their contentions regarding the indictment be sustained on this appeal.

The law of Delaware providing for the survival for certain purposes of dissolved corporations (Section 278 of the [fol. 117] General Corporation Law of the State of Delaware, (8) Del. C. §278) reads as follows:

"All Corporations, whether they expire by their own limitation or are otherwise dissolved, shall nevertheless be continued, for the term of three years from such expiration or dissolution, bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, and to divide their capital stock, but not for the purpose of continuing the business for which the corporation shall have been established. With respect to any action, suit, or proceeding begun or commenced by or against the corporation prior to the expiration or dissolution and with respect to any action, suit or proceeding begun or commenced by or against the corporation within three years after the date of the expiration or dissolution, the corporation shall, only for the purpose of such actions, suits or proceedings so begun or commenced, be continued

bodies corporate beyond the three-year period and until any judgments, orders, or decrees therein shall be fully executed."

Corresponding provisions of the law of Maryland are:

"The dissolution of the corporation shall be effective when the articles of dissolution have been accepted for record by the Commission, provided; however, that the corporation shall continue in existence for the purpose of paying, satisfying and discharging any existing debts and obligations, collecting and distributing its assets, and doing all other acts required to liquidate [fol. 118] and wind up its business and affairs." Section 72(b) Article 23 of the Annotated Code of Maryland (1951) [now Section 76(b)] and

"The dissolution of a corporation shall not relieve its stockholders, directors or officers from any obligations and liability imposed upon them by law; nor shall such dissolution abate any pending suit or proceeding by or against the corporation, and all such suits may be continued with such substitution of parties, if any, as the court directs . . ." Section 78(a) *idem*.

Appellants argue that both the Delaware and the Maryland statutes should be interpreted to mean that a dissolved corporation survives its dissolution only for the purpose of winding up its civil affairs and discharging its civil obligations; but that no criminal charges which have not been disposed of by imposition of a fine or penalty survive the dissolution of the corporations. Stated more clearly, the argument is that insofar as pending criminal proceedings are concerned, the dissolution of a corporation is equivalent to the death of a natural person and that unless the legislature of the state of the corporation's birth shall have specifically provided otherwise (as they contend neither Delaware nor Maryland has done) a pending criminal proceeding can go no farther. We think this contention is based upon a strained and artificial interpretation of the statutory language. There may be situations in which a

precise and restrictive meaning should be given to the words "action, suit or proceeding" as used in the Delaware statute and the words "suit or proceeding" as used in the Maryland statute. However, the application of these words where the question involves the abatement or survival of [fol. 119] criminal prosecutions pending against corporations does not present such a situation. To give them the construction for which appellants contend would offend our sense of justice, pervert the obvious policy of the state in enacting these survival statutes, and provide an easy avenue of escape by corporations from the consequences of their criminal acts by the simple process of voluntary dissolution.

That there is a division of authority on this question can not be denied. The Tenth Circuit in the case of *United States v. Safeway Stores, Inc.*, 10 Cir., 140 F.2d 834, in considering the same Delaware statute involved here, concluded that the word "suits" does not include a criminal prosecution. It is to be noted, however, that the Court in that case did not even consider, much less interpret, the broader term "proceedings," appearing in the same statute. Moreover, the corporations involved there had been dissolved prior to indictment, and therefore there was no "pending" proceeding.

In the later case of *United States v. United States Vanadium Corporation*, 10 Cir., 230 F.2d 646, decided by a different panel of judges of the Tenth Circuit, that Court, while adhering to the doctrine of the *Safeway* case, said that the panel of judges who decided the *Vanadium* case were not "in full sympathy with the law as declared in the *Safeway* case," and strongly intimated that were it not for their feeling "that one panel of the Court should not lightly overrule a decision by another panel" they would have arrived at a different conclusion.

In *United States v. Line Material Company*, 6 Cir., 202 F.2d 929, the Court of Appeals for the Sixth Circuit, construing this same Delaware statute, held that the words [fol. 120] "action, suit or proceeding" did not embrace a criminal prosecution.

On the other hand, the Court of Appeals for the Seventh Circuit, in the case of *United States v. P. F. Collier & Son*

*Corporation*, 7 Cir., 208 F.2d 936, reached exactly the opposite conclusion. The reasoning of that Court was as follows:

"We have read and reread defendants' argument, as well as the many cases cited in support of the order appealed from, but we are unable to escape what we think is the plain, unambiguous terminology contained in the Delaware statute. The words 'any action, suit, or proceeding' in their ordinary and generally accepted meaning and use embrace, so we think, all forms of litigation, civil, criminal, bankruptcy and admiralty. The words carry such a plain meaning that they are hardly open to construction, and their employment leaves no room to speculate on the legislative intent. If, however, the legislature had intended to embrace only civil litigation, it could easily have done so by the addition of a single word, 'civil,' and could have provided for 'any civil action, suit or proceeding.' Or if it had intended to exclude a criminal prosecution from the broad and inclusive language which it employed, it could readily have done so by providing, 'any action, suit or proceeding other than a criminal prosecution.' And while it may be an immaterial observation, no sound reason occurs why a legislature would intend to relieve a dissolved corporation of its criminal liability and at the same time preserve its civil liability. A corporation cannot be sent to jail; the discharge of its liability whether criminal or civil can only be effected by the payment of money."

[fol. 121] In our view the *Collier* case correctly interprets and applies the words of the Delaware statute. We have held in a tax case, construing the very Delaware statute involved here that "[T]he word 'proceeding' is obviously broader than action or suit and should be given full effect in order to achieve the fundamental purpose of the statute." *Bahen & Wright, Inc. v. Commissioner of Internal Revenue*, 4 Cir., 176 F.2d 538. See also *United States v. Maryland and Virginia Milk Producers, Inc.*, 145 F.Supp. 374 (D.C. Dist. Col.).

We find the Maryland statute to be, in all its essentials, of like effect to that of Delaware. We conclude therefore that under the applicable statutes, both of Delaware and Maryland, the dissolution of appellant corporations did not extinguish their liability in pending criminal proceedings against them.

Appellants' motion in the District Court to dismiss Counts 1 and 2 of the indictment on the ground that the alleged acts and conduct of defendants charged therein "were permitted, sanctioned, and encouraged" by the announced governmental policy and law of the State of Maryland was without merit, and was properly overruled.

Two Maryland Statutes were cited in support of this motion. One was the Maryland Alcoholic Beverages Law; the other the Maryland Fair Trade Law. The pertinent portions of the Alcoholic Beverages Law merely provide against discrimination by manufacturers and wholesalers in price, discounts, or quality of merchandise between one customer and another; and further that the Comptroller of the Treasury shall prescribe maximum discounts and require manufacturers and wholesalers to file a schedule of [fol. 122] their prices to their customers, and to file with the Comptroller any proposed price change, which change, if a reduction in price, is to be postponed for a period of time prescribed by the Comptroller sufficient to permit notice to other manufacturers or wholesalers selling similar wines or liquors and an opportunity for them to make a like price decrease. Obviously, this system of regulation preserves free and open competition among retailers, and could not by any stretch of the imagination be denominated "horizontal" price fixing.

The Fair Trade Law of Maryland, as do most such State Fair Trade Laws, merely permits manufacturers and wholesalers of trade-marked goods which are in free and open competition with other goods of the same class to fix the retail price of these goods for the purpose of protecting the trade mark. Neither the Maryland Fair Trade Law nor the Maryland Alcoholic Beverages Law affords protection against prosecution for a conspiracy to fix prices "horizontally" or a conspiracy to monopolize trade or an attempt to do so.

The indictment in count one charged a conspiracy to bring about "horizontal" price fixing; in count two it charged a conspiracy to monopolize interstate trade and commerce in alcoholic beverages, and in count three it charged an attempt to monopolize such trade and commerce. None of these acts is in any way permitted, sanctioned, or encouraged by the announced governmental policy and law of the State of Maryland.

It follows from what has been said that the judgment of the District Court is *Affirmed*.

[fol. 123]

IN UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

No. 7608

MELROSE DISTILLERS, INC., C V A CORPORATION, and DANT  
DISTILLERY AND DISTRIBUTING CORPORATION, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

Appeals From the United States District Court  
for the District of Maryland.

JUDGMENT ENTERED August 29, 1958

This Cause came on to be heard on the record from the United States District Court for the District of Maryland, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgments of the said District Court appealed from, in this cause, be, and the same are hereby, affirmed.

Morris A. Soper, United States Circuit Judge.

Clement F. Haynsworth, Jr., United States Circuit  
Judge.

Ben Moore, United States District Judge.

[fol. 124] Clerk's Certificate to foregoing transcript  
(omitted in printing).

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[fol. 125]

SUPREME COURT OF THE UNITED STATES

No. 404, October Term, 1958

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MELROSE DISTILLERS, INC., CVA CORPORATION and DANT  
DISTILLERY and DISTRIBUTING CORPORATION, Petitioners,

vs.

UNITED STATES OF AMERICA

---

ORDER ALLOWING CERTIORARI—November 10, 1958

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted limited to question No. 1 presented by the petition for the writ which reads as follows:

"1. Can a Maryland corporation or a Delaware corporation be further criminally prosecuted (in a federal court for a federal offense) following its dissolution under the laws of the state of its creation occurring after indictment but before arraignment or plea, such dissolution timely appearing of record in the case?"

The case is transferred to the summary calendar. The Attorneys General of the States of Maryland and Delaware are invited to file briefs, as amici curiae, in this case if they are so advised.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.